

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 Department 19 Hon. Warren L. Ettinger, Judge
4
5 BETTY BULLOCK,)
6 Plaintiff,)
7 vs.) NO. BC249171
8 PHILIP MORRIS, INCORPORATED, a)
corporation; et al.,)
9 Defendants.)
_____)

10

11

12 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
13 Los Angeles, California
14 September 20, 2002

15

16

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27 Volume ____ of ____ Ruanne McArthur CRR, RPR, CM, CSR#2699
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1 Los Angeles, California September 20, 2002
2 Case Number: BC249171
3 Case Name: Bullock vs. Philip Morris
4 Department 19 Hon. Warren L. Ettinger, Judge
5 Reporter: Ruanne McArthur, CSR #2699
6 Time: 9:00 a.m. Session
7 Appearances: (As heretofore noted.)
8 -oOo-

9 (The following proceedings were held
10 in open court within the presence of
11 the jury:)

12
13 THE COURT: The record will reflect that
14 counsel are present, the jury is in the courtroom. This
15 is the time set for final argument.

16 (A pause in the proceedings.)
17 THE COURT: Mr. Piuze, you may begin.
18 MR. PIUZE: I'm on the clock.

19 Hi.

20 (All respond.)

21
22 * OPENING ARGUMENT

23
24 BY MR. PIUZE:

25 Thank you for listening.

26 Some of the stuff was thick. That's a
27 stipulation from the jury I get. When we read passages

1 of trial testimony from Florida in a case called Engle,
2 and it wasn't quite in context, that was thick; but you
3 all listened hard because you all knew it was important.

4 And on behalf of Mrs. Bullock, thanks for
5 paying so much attention.

6 Now, the bottom -- this is a phrase I like
7 because you have heard me say it before. The bottom
8 line here is really, really simple. Some people had a
9 business and their business was growing tobacco; and
10 some people made a good living growing the tobacco and
11 other people cured it and other people made it into
12 cigarettes in the factories, and they made a good living
13 doing that.

14 And other people distributed and sold it,
15 and someone over at Safeway or the local liquor store or
16 wherever made a profit, and it was a nice business and
17 everyone made some money and everything was fine. It
18 was no different than selling chewing gum or licorice or
19 maybe even candy bars.

20 Smoking cigarettes isn't a necessity of
21 life. It's not like selling food. As we found out in
22 this case, until we got into the 20th Century and until
23 modern machinery existed to roll out these cigarettes by
24 the trillions, smoking wasn't that widespread.

25 And I'm sure we are going to look back
26 from the future at this century and however much of the
27 next century this continues now, our ancestors are going
28 to look at what happened and sort of shrug and say, "Gee

1 whiz."

2 But anyway, it was okay and everyone was
 3 happy. People smoked it. People didn't understand why
 4 they liked it. Maybe some of you that used to smoke
 5 didn't understand why you liked it so much until you
 6 heard what was going on here; but then something
 7 happened, and what happened was that it became obvious
 8 that the stuff killed people; slowly, painfully, killed
 9 people.

10 And so a decision had to be made.
 11 Certainly not the kind of decision that you or I get to
 12 make ever, but a decision had to be made; and the
 13 decision was very simply, money or health. Money or
 14 death. And the decision was made.

15 Now, by 1957 to 1959, according to the
 16 world's greatest epidemiologist, Richard Doll -- I
 17 didn't say that; David Burns said it. David Burns was
 18 one of the plaintiff's first couple of witnesses. He
 19 wrote one of the Surgeon General's reports. He was the
 20 senior editor or a senior adviser to most of the others
 21 since then, a member of the public health community, a
 22 superstar in his own right; but from where he stands, he
 23 says Richard Doll is the world's greatest
 24 epidemiologist.

25 You've had the benefit, you've had the
 26 luxury, the pleasure, the honor of seeing some of the
 27 finest public health and scientific experts in the world
 28 come into this courtroom and talk to you about something

1 they consider super important, not just to Betty
 2 Bullock.

3 Anyway, by 1957 to 1959, it had been
 4 established. Sir Richard Doll said that there was a
 5 worldwide scientific consensus that smoking caused lung
 6 cancer.

7 And since 1957 to 1959, when there was a
 8 worldwide -- not just in Richmond, Virginia; not just in
 9 Winston-Salem, North Carolina; not just on Park Avenue
 10 in New York City; not just in the United States, but a
 11 worldwide consensus that smoking caused lung cancer,
 12 Philip Morris and its fellow members of the TIRC and
 13 the CTR denied, provided misinformation, disinformation,
 14 lies, and then some more lies on the subject.

15 And it doesn't take a genius to figure how
 16 and why they did it. Because if they said, "Right,
 17 everybody, what we sell is death," they are out of
 18 business.

19 Now, Philip Morris in late October of
 20 2000, decided to tell the world what it had known since
 21 the 1950s; that smoking is death, that smoking causes
 22 lung cancer.

23 Why do you think that in late 2000, Philip
 24 Morris decided to come clean after something like 45
 25 years of lying? On opening statement, Mr. Bleakley said
 26 to the effect, Philip Morris has done a lot of things
 27 wrong but he doesn't want to talk about it. Duh. No
 28 kidding. I want to talk about it.

1 In 2000, late 2000 ironically, within less
 2 than a half a year, maybe within about three months of
 3 when Betty Bullock, who has been hooked for all of these
 4 years, gets diagnosed with lung cancer, Philip Morris

5 decides to tell everyone that it had been wrong during
6 the 1950s, Sixties, Seventies, Eighties, Nineties.

7 Why? Do you think Philip Morris woke up
8 one morning and said, "Yeah, it's time." Or do you
9 think that after a lot of hard work, effort, blood,
10 sweat, tears and lies, Philip Morris and its fellow
11 members of the TIRC and the CTR got run down and
12 cornered?

13 Dr. Whidby was here. One of his main jobs
14 in his last assignment at Philip Morris was turning over
15 countless documents up in Minnesota, documents to be
16 posted on the internet.

17 And these countless documents -- don't
18 forget, he retired in what, '98, I think? Around
19 there? So the last couple of years he was up there,
20 that's what he was doing, turning over documents to go
21 up on the internet.

22 And then we had Dr. Cummings in here who
23 is working on, I think, a million dollar grant from the
24 USA to go through all those documents and catalogue
25 them. Because those documents exist in the state of
26 New York too, the attorney general of the state of
27 New York got his hands on them.

28 And he's going through all those documents

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1 and cataloging all those documents, many of which you
2 saw here.

3 So now in 1998 when these documents get
4 released to us and we can finally see what's going on,
5 Philip Morris had a change of heart; and now that we get
6 a look to see what's going on, Philip Morris says, "Oh,
7 yeah, you know what? This stuff does cause lung
8 cancer. It does kill; and by the way for good measure,
9 it's an addictive drug."

10 Well, a couple of things happened. I
11 could put them in two baskets. A couple of things
12 happened because of that delay. From the 1957 to the
13 1959 period when there was a scientific consensus around
14 the world that smoking caused lung cancer and death to
15 around 1999 or so, 2000, when Philip Morris came clean,
16 and here's the two baskets:

17 They made a ton of money. A lot of people
18 died; and one thing that isn't on that website is,
19 "We're sorry." Another thing that isn't on that website
20 is, "We're ashamed."

21 I apologize for using this. I kept
22 hearing when I showed some of these documents, "The
23 documents speak for themselves." They do. Shamefully.
24 I've highlighted them in orange so they can be seen on
25 this machine here. You are going to get these
26 documents.

27 There's a pile of documents, and they
28 might get all messed up and not in the right order and

3685

1 there may be some addiction documents locked in with
2 some cancer documents; but I'm just going to go through
3 some of the ones I think are really important so I can
4 talk to you about them.

5 Here. 1953, December 1953. In December
6 of 1953, there had been a lot of publicity about the
7 fact that smoking caused lung cancer. If you think
8 about it, if there was a lot of publicity about the fact
9 that some kind of toothpaste out there on the market,

10 the kind of toothpaste that Bill Farone's old company,
11 Unilever, might make, if there was an issue that some of
12 that toothpaste caused gum inflammation or maybe caused
13 people to lose a couple of teeth, that toothpaste would
14 be off the market the next week.

15 While the people back at the factory
16 decided whether it was true or not, the toothpaste would
17 not be allowed to sit on the shelves for months or years
18 while they were trying to figure out what to do, putting
19 people in harm's way.

20 I guess if there was a tire on a vehicle
21 called a Firestone tire on an Explorer vehicle that blew
22 out and caused maybe 150 to 200 families in this country
23 to lose someone, 150 to 200 people dead, after a little
24 bit of pushing and shoving, 6 or 7 million tires have
25 been recalled, gone off the market, boom out of there.

26 In California every year 40,000 people die
27 of tobacco-related disease, just in California.

28 10 percent of the U.S. That's more than 100 a day,

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1 every day, every week, every year, every decade for four
2 decades.

3 Dr. Burns told us last year something like
4 13,000 -- the last year it was reported, 2000, 13,000
5 people-plus died in this state from lung cancer. 11,500
6 of those deaths were attributed to tobacco. It's a half
7 a million over the last 45 years or so that we are
8 talking about.

9 Anyway, by 1953 this was a product, a
10 consumer product meant for consumers, regular people, to
11 go into the store and buy, and there was a scare that
12 this stuff killed people; and so instead of pulling it
13 off of the market to test it like someone who made
14 toothpaste would or instead of doing anything to protect
15 its customers, the tobacco industry instead hired a
16 public relations firm, because after all, death is only
17 a public relations problem.

18 And here's where it starts, sort of.

19 Here's where the trail starts sort of. Right there.
20 December 15, 1953.

21 This is from Hill and Knowlton. Hill and
22 Knowlton was the public relations firm that was hired.
23 The TIRC, Tobacco Industry Research Committee, wound up
24 being on the floor below Hill and Knowlton in the
25 skyscraper in New York. It was run by Hill and Knowlton
26 people.

27 The Tobacco Industry Research Committee
28 was named by Hill and Knowlton. The public relations

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1 people wanted the word "research" in there. They
2 thought it would be good for public relations. This is
3 in all these documents. Read it for yourself.

4 And here's what we find:

5 "In addition to the
6 cigarette companies, two
7 important groups of tobacco
8 growers are involved
9 enthusiastically in supporting
10 our program. Together these
11 tobacco
12 growers represent some
13 600,000 farms and 2,700,000
14 farmers. Obviously, the tobacco

15 growers are the political
16 strength along with the 1,300,000
17 retail tobacco outlets.

18 "As another indication of
19 how serious the problem is, the
20 officials stated that salesmen in
21 the industry are frantically
22 alarmed and that the decline in
23 tobacco stocks on the stock
24 exchange market has caused grave
25 concern, especially since tobacco
26 earnings will be much higher next
27 year because of the termination
28 of the excess profits taxes."

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1 Profits were in danger. Here's what was
2 done about it: A promise was made. When the public
3 relations -- you know, do we get scientists? No. We
4 get public relations people.

5 The group was set up, TIRC. It announced
6 itself in the Frank Statement. A promise was made.
7 Here's the promise, right here. Here's who made the
8 promise. The promise was made by The American Tobacco
9 Company, Brown & Williamson Tobacco Company, Lorillard
10 Company, Philip Morris Company, R.J. Reynolds Company,
11 United States Tobacco Company, The American Tobacco
12 Company, and others.

13 These people announced their existence as
14 part of a group with an ad on that day, January 4, 1954;
15 and we've even gotten the actual honest newspaper that
16 was published here in L.A. and you can look at the ad.

17 And here is a promise that was never
18 retracted. This is a fraud case primarily, this case.
19 When you get the special jury questionnaire or verdict
20 form, general verdict form, most of it deals with fraud,
21 some of it deals with negligence, some of it deals with
22 what's called product liability; but this is primarily a
23 fraud case, and there are lots of different kinds of
24 fraud that you have been instructed about and you will
25 answer some questions about, but one is called a false
26 promise.

27 Anyway, here's a promise:
28 "We" -- and that includes

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1 Philip Morris -- "accept an
2 interest in people's health as a
3 basic responsibility paramount to
4 every other consideration in our
5 business."

6 Well, hooray for them. Because, after
7 all, what manufacturer of any product that's sold in
8 this country shouldn't consider the health of its
9 customers as the paramount thing? I don't care whether
10 we are dealing with tomatoes or air conditioners or baby
11 cribs, every manufacturer should consider the health and
12 safety of the people that are going to spend their money
13 on the product as the most important thing.

14 "We believe the products we
15 make are not injurious to
16 health."

17 I will comment on that in a second.

18 "We always have and always
19 will cooperate closely with those

20 whose task it is to safeguard the
21 public health."
22 They had no right to say those things
23 because there was no intention of carrying those things
24 out and most likely they were flat-out lies at the time;
25 but at a minimum, they had no intention of carrying
26 those things out. They had no intention of cooperating
27 with the public health authorities at all.
28 Philip Morris didn't have a Marlboro then,

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1 didn't have the Marlboros as we know them. We know
2 Marlboro is the huge, colossus, dominant cigarette brand
3 in the country and throughout the world. At the time
4 when this 1954 Frank Statement was done, Philip Morris
5 wasn't that big a deal compared to the others and
6 Marlboro wasn't that big of a deal compared to other
7 cigarettes.

8 Philip Morris didn't just join in this
9 promise. Philip Morris made a couple of promises on its
10 own, and one of the promises that Philip Morris made was
11 this. This is in March of 1954. Small world, but in
12 March -- in March, March 1954, I was X years old and
13 some of you guys weren't even born yet, and one of the
14 great things about this particular jury is that there's
15 some of you who were around and remember; and for those
16 of you who were around and remember, please help those
17 who weren't around and don't remember.

18 But in March of 1954, faced with claims
19 that their product was killing people, we have this, and
20 I just have never been able to get over the fact that a
21 non-smoking sophomore in high school out on the prairies
22 recalls this ad from 1954 in February.

23 Anyway, obviously, looking at that ad, it
24 really doesn't give us much of a clue that this
25 product -- not Ivory soap, Lux soap, not some hair
26 detergent -- but this product, which they thought might
27 kill people, the ad doesn't give us much of a clue to
28 that; and what's happened with the advertising is going

3691

1 to be a theme that I'm going to talk about over the next
2 what -- what's left of my time.

3 But almost to the -- almost within a month
4 of this here, the chief executive officer of Philip
5 Morris makes his own statement, not just through his
6 umbrella organization with all the other tobacco
7 companies, but his own statement; and here it is, and
8 this is pretty common sense stuff.

9 "If we thought we were
10 selling a product that was bad
11 for consumers, we'd stop making
12 it."

13 That's pretty common sense, isn't it?

14 "If we thought or had
15 knowledge that in any way we were
16 selling a product harmful to
17 consumers, we would stop business
18 tomorrow."

19 And after all, that's pretty
20 non-controversial. Of course, they would. Any
21 manufacturer of products that's hurting people, they
22 either got to fix it or stop making it, right?

23 But, of course, as long as Philip Morris
24 didn't realize that its product was harmful to people

25 and as long as Philip Morris didn't realize that their
26 consumers were hurting, they didn't have to live up to
27 this promise, because, after all, they didn't have any
28 knowledge, right?

3692

1 They don't have to live up to this promise
2 and go out of business and stop making money until they
3 figure out that their research -- I'm sorry -- until
4 they figure out that their product is harmful to
5 someone.

6 That was 1954, so they did a good job
7 trying to figure out if their product was harmful to
8 someone.

9 Here's what the boss of their research and
10 development told the boss of the Lorillard Company
11 research and development 26 years later, one quarter of
12 a century later, 40,000 deaths a year in California
13 alone later, 25 years times 40 equals 1 million
14 California lives later.

15 "Here are the subjects we
16 want to avoid. We want to avoid
17 developing any tests to see if
18 our product causes cancer. We
19 want to avoid relating human
20 disease to smoking."

21 Shame.

22 So in March 2 -- on March 2, 1998 -- let's
23 see if I have it -- 1954, 1998, 44 years later -- 44
24 years, almost half of a century later, the then chief
25 executive officer of Philip Morris was able to say under
26 oath, rightfully so, that Philip Morris had never ever
27 said that smoking causes lung cancer; and that was true
28 testimony because Philip Morris in 1998 in March, had --

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1 And in March of 1998, in Minnesota, under
2 penalty of perjury, the chief executive officer of
3 Philip Morris said he didn't know if anybody had died
4 from smoking.

5 Someone should go find him and wash his
6 mouth out.

7 I guess if he had taken the time to look
8 at the California statistics alone, he would see that
9 over those 44 years, at 40,000 deaths per year, only
10 about one and three quarter million Californians,
11 10 percent of this country's population, had died as a
12 result of smoking cigarettes; and I guess he would have
13 seen that about a half a million at 11,500 per year had
14 died from lung cancer directly related to smoking
15 cigarettes.

16 But this guy here, the boss of the
17 company, the boss of the boss of the international
18 Philip Morris company doesn't even know if one person
19 has ever died from smoking.

20 Now, I hope you will please recall that
21 Dr. Farone said that it was Osdene's job -- I'm going to
22 show you one of these flow charts again -- but there was
23 one big guy up here and then these four guys; and the
24 two names we have heard a lot about is Bill Farone, who
25 was in here testifying, and Dr. Tom Osdene, who wasn't.

26 I didn't prevent him from testifying here,
27 and I didn't prevent Bible from testifying here, and I
28 didn't prevent Seligman from testifying in here. I

3694

1 didn't prevent any of them from testifying in here.
2 Now, if these guys had an excuse, they would have been
3 in here telling you about it.

4 Anyway, Bill Farone told you that Osdene's
5 job, part of it, was to create doubt about the health
6 risks of smoking, and it was said many, many, many times
7 to him and was backed up by their boss, Seligman; and
8 that's an accusation that has been made here under oath
9 and made many times here under oath, and you didn't hear
10 anyone come in here and deny that. That courtroom door
11 ain't locked.

12 So one of the top scientists over there at
13 Philip Morris, one of the top five, it was his job to BS
14 the American public about the health risks of smoking to
15 create doubt among addictive smokers.

16 Anyway, I guess Mr. Bible should have
17 taken the jet down to Richmond and knocked on the door
18 of Dr. Whidby's office and say, "By the way, Dr. Whidby,
19 you have been here since '72. Did you ever hear anyone
20 around here say smoking doesn't cause lung cancer?"

21 "Shucks, no."

22 "I'm paying all you great scientists down
23 here all this money. Have any of you ever heard that
24 smoking doesn't kill a lot of people?"

25 "Nah."

26 So that's a disgusting lie. It's a
27 shameless lie; and if they weren't cornered, the guy
28 that succeeded him as chief executive officer would

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1 still be lying.

2 And on March 2, 1998, Geoffrey Bible,
3 chairman of the board, CEO Philip Morris, Inc. said if
4 one person died from smoking, he would shut down the
5 business.

6 Does that sound familiar?

7 In 1954 when George Weissman said that, it
8 was a lie, and in 1998 when Geoffrey Bible said that, it
9 was a lie; and where's the proof of that pudding? When
10 Philip Morris came clean in October of 2001 and said for
11 all the world to hear, "Our product causes lung cancer,
12 kills people, and by the way it's addictive," they
13 forgot to shut down the business.

14 So here we are in the next phase -- they
15 forgot to shut down the business. I guess that's not
16 surprising, because they are still making a ton of money
17 over there.

18 So now we are on to the next phase. The
19 next phase is, "Ladies and gentlemen, we have admitted
20 it now."

21 I want to hear when -- we are going to
22 have a break in about one hour. We started late. I'm
23 sorry, your Honor. I apologize.

24 THE COURT: We are going to have a stretch
25 break. Would this be a good time and just take two
26 minutes, or do you want to wait a little bit?

27 MR. PIUZE: No. It's my two minutes and I'm
28 gauging them. I think they're okay.

3696

1 THE COURT: Okay. You tell them when you think
2 they should take a break.

3 MR. PIUZE: When I see the second yawn, that's
4 when we'll take it.

5 THE COURT: Okay. Go ahead.

6 MR. PIUZE: And you -- we took a lot of time
7 picking a jury and everyone knew this was a special
8 case.

9 I've tried -- I've tried to inject humor
10 here to keep it light sometimes, because it isn't
11 light. It's the opposite of light. It's the heaviest
12 there is; and you all know that my attempts at humor,
13 sometimes successful, was for that reason. It isn't
14 because I don't think this is about the most important
15 thing outside of our personal lives we are going to be
16 doing.

17 Anyway, I'm going to be done kicking
18 Geoffrey Bible around, and all I can say is he had a
19 right to come in here and tell me that I shouldn't kick
20 him so hard, but he didn't show up. None of them showed
21 up. Not one of them showed up.

22 What happens -- what happens if cigarettes
23 aren't addictive? You want to -- let me just run this
24 same story right past you.

25 There's a consumer product, people buy it,
26 the consumers enjoy it. Let's call it licorice. I'm
27 just making it up, but licorice. Anyone likes Hershey
28 bars, it's Hershey bars.

3697

1 And someone says, "The stuff will kill
2 you." Then obviously, what's going to happen is people
3 aren't going to buy it anymore. It's that easy. If
4 someone came out and said, "Licorice is proven to kill
5 you," it's gone.

6 But there's a little difference with this,
7 and the difference is that it's an addictive drug.

8 I represent the plaintiff is a drug
9 addict. There's no two ways about it. You watched that
10 video. The defendant is a drug dealer and there's no
11 two ways about it and they admit it; and the difference
12 between these cigarettes and a Hershey bar or some
13 licorice is that this stuff is addictive.

14 So I'd like to talk a little bit about
15 addiction and how we know it and why we know it; and
16 what I'm telling you now is non-controversial because in
17 -- excuse me -- in late October of 2000, after years
18 and years and years and years and decades of
19 denying it, Philip Morris said, "Oh, yeah, it is an
20 addictive drug. Cigarette smoking is addictive." So
21 they told us that too.

22 If it wasn't addictive, we wouldn't be
23 here. If it wasn't addictive, Betty Bullock wouldn't be
24 sick. If it wasn't addictive, all these other people
25 that I'm going to talk about wouldn't have died; but the
26 funny thing is the parlay here, the way it all comes
27 together is this substance, which is bad, happens to be
28 addictive and now you have to pull apart; and we know

3698

1 that can be done.

2 And I told you in opening statement and
3 I'll say it again, put a gun to someone's head and say,
4 "I will wipe out your family if you don't stop smoking
5 or snorting or injecting," 99-point-something percent of
6 the time, that will happen.

7 And virtually everyone can, in theory,
8 quit smoking. It's addictive, but in theory virtually
9 everyone can quit smoking. But what's the reality?
10 Because you saw Betty Bullock testify here; but let me

11 tell you about all the other Betty Bullocks or Benjamin
12 Bullocks.

13 Mike Cummings is the chief cancer
14 researcher at his hospital, which is the oldest cancer
15 treatment center in the country. He's a public health
16 official. He comes from Buffalo, New York to here, not
17 just to testify, but to sit on our Proposition 99
18 oversight committee.

19 By the way, Marvin Goldberg is not just
20 the head of the marketing department of Penn State
21 University, but he comes out to California to sit on the
22 Proposition 99 oversight committee too.

23 And David Burns comes up from San Diego to
24 sit on the Proposition 99 oversight committee too, and
25 Neal Benowitz is involved in that too.

26 But anyway, Mike Cummings said that he
27 runs the largest smoking cessation clinic in Upstate
28 New York or western New York, the largest smoking

3699

1 cessation clinic outside of New York City in the whole
2 state of New York, and the people that come to that are
3 heavily -- heavy-duty smokers; and his statistics are
4 that every year, of all smokers who try to quit smoking,
5 something like 3 or 4 percent succeed.

6 And Neal Benowitz says of all smokers who
7 try to quit smoking every year, 2 to 4 percent succeed.
8 And Dr. Rodas, who isn't a fancy researcher but whose
9 feet on are the ground in the trenches seeing people day
10 in and day out from a general practitioner's
11 perspective, says that less than 5 percent of the people
12 that come to him to stop smoking succeed.

13 So that leaves at least 95 percent of the
14 people who don't succeed; and so when we start judging
15 Betty Bullock here, which we are going to do, just
16 remember that 95 percent of the people don't succeed; do
17 not.

18 Mike Cummings also said in his particular
19 clinic he gets only heavy, heavy smokers. He's treated
20 10,000 of them. At the end of one year, the success
21 rate is 20 to 30 percent, which means the failure rate
22 is 70 to 80 percent.

23 And when we think about Betty Bullock,
24 just remember, the failure rate is 70 to 80 percent of
25 the most heavy smokers, the most motivated smokers that
26 have walked into Mike Cummings' clinic.

27 Dr. Rodas told us that he thought Betty
28 Bullock tried as hard as she could to stop smoking,

3700

1 tried and tried and tried and tried and tried. Well, I
2 don't know how he can know that. I don't know how I can
3 know that. We know that she expressed shame at her
4 ability to stop smoking. We know that she expressed
5 guilt and remorse about her inability to stop smoking.

6 Let me give it to you on a more everyday
7 kind of basis. She's not a fancy person. She worked
8 hard since she was a kid; and money means something to
9 her, and we heard her get in a big beef in this
10 deposition with this -- one of these doctors because she
11 thought the doctor was overcharging her.

12 A real person, real values with real
13 money. She went back there and she got her daughter to
14 contribute. She spent a lot of money trying to stop
15 smoking; patches, pills, Zyban, a lot of money.

16 Now I'd like to talk about Neal Benowitz.
17 I skipped over Richard Doll a little. I'd like to
18 mention him one time before I won't talk about him any
19 more.

20 United States President gave him a medal,
21 put it right in his hand. The Queen of England not only
22 made him a knight in 1971, but gave him something called
23 a Companion of Honor. There's only 60 people in the
24 entire world with that. He's got a gold medal from the
25 United Nations, platinum medal from the World Health
26 Organization, and on and on and on and on.

27 And this giant of medicine of the 20th
28 Century verified this chart, which I just want to show

3701

1 you, and then it will go away. You'll have it in the
2 jury room, but you won't see it much later during my
3 argument and it showed as follows:

4 See back here, had a little war going on,
5 World War II; and so stuff that was happening in Germany
6 in 1939, 1943 -- there were two yawns right there, your
7 Honor, so we're getting close.

8 (Laughter.)

9 MR. PIUZE: What was happening in 1939 and 1943
10 in Germany didn't really get out to the world because
11 there was a major, huge, unbelievable war going on.

12 But by 1950, Sir Richard Doll and Hill
13 published their study at almost the exact same time as
14 in the United States Wynder and Graham published their
15 study; and the results were in England, "Smoking is an
16 important factor in the production of carcinoma of the
17 lung."

18 And in the United States, "Excessive and
19 prolonged use of tobacco, especially cigarettes, seems
20 to be an important factor in the induction of
21 brochogenic cancer."

22 Dr. Doll told you that a lot of scientists
23 didn't believe this. It wasn't accepted right away.
24 People couldn't understand it. A lot of people said --
25 scientists at that time said, "Well, you know, those are
26 statistics. Those are statistics, but we need some more
27 proof besides statistics."

28 And so Dr. Doll started in England a study

3702

1 in which he followed all of the doctors in England who
2 smoked and who returned these questionnaires to see what
3 would happen to them; and at the exact same time in the
4 United States, the American Cancer Society was doing its
5 study, case control studies, that's looking backwards.

6 Those are the looking backwards studies
7 where you go in the hospital and you talk to people who
8 got lung cancer and you find out, "Gee, whiz, how about
9 that. 95 percent of you are heavy smokers."

10 That's a case control study; but in order
11 to satisfy critics, both in the United States and in
12 England, they did forward-looking studies, which are
13 called "cohort" studies.

14 Dr. Doll just finished this study of
15 34,000 male British doctors last year. He followed them
16 from -- he followed them 50 years; and the American
17 Cancer Society did this much bigger number, but they
18 both came out and said, "Bingo. No question. Smoking
19 causes lung cancer."

20 And then you can see other countries --

21 Belgium -- excuse me -- Japan, Britain, Netherlands,
22 Sweden, the U.S., and the World Health Organization, and
23 by the time we get up into '57 to '59, all of this, the
24 scientific community has agreed.

25 So for this work, among other stuff,
26 because this isn't all Richard Doll does, but for this
27 work, continuing, if this is however long it is, his
28 work continues out to the back of that room. That's how

3703

1 long it goes.

2 For this work, he is the greatest
3 epidemiologist there is; and so I thank him for coming
4 here, and now I want to talk about Neal Benowitz after
5 the stretch.

6 MR. PIUZE: The two minutes can be on my
7 clock, your Honor. I donate it.

8 (A pause in the proceedings.)

9 THE COURT: Go ahead.

10 MR. PIUZE: The reason I decided to talk about
11 Dr. Doll just then was because it was time to go on to
12 Dr. Benowitz, who, according to Dr. David Burns down at
13 UC San Diego, is one of the world's leading, if not the
14 world's leading, medical expert on nicotine addiction.

15 Dr. Benowitz is a professor at UCSF, and
16 he's an internist and a toxicologist. Although his
17 credentials aren't -- I can't even use Babe Ruth and I
18 can't even use Michael Jordan here -- but although his
19 credentials aren't to Dr. Doll's level, this guy is
20 about the smartest guy in the world when it comes to
21 nicotine addiction.

22 He's written the books and he's written
23 the papers and he's sat on the committees and he edited
24 the Surgeon General's report on addiction, and he does
25 all these experiments and he's the man. So here's what
26 he had to say: Nicotine is like a beautiful example of
27 all drugs of abuse. It releases dopamine in the brain.
28 Dopamine is a feel-good hormone.

3704

1 So when we see people -- and those of us
2 who used to be those people -- rush out to take their
3 hit, that's exactly what they are doing. Because when
4 that nicotine goes into their brain, their brain
5 releases a chemical called dopamine which is a feel-good
6 chemical.

7 What happens with exposure and use to
8 it -- and by the way, this differs in people; and
9 Dr. Benowitz said, "We know people who smoke two packs a
10 day for 10 or 15 or more years and can quit like that
11 (snaps fingers), and that's because of the brain
12 chemistry of those people."

13 And he also said, "I know people" -- he,
14 not me, not Michael Piuze, Neal Benowitz. "I know
15 people who can't ever seem to stop smoking. That's
16 because of their brain chemistry."

17 But anyway, what happens is that if before
18 anyone ever smoked the -- smoked the cigarette to get
19 the nicotine, to get the feel good, if this was their
20 baseline right here, after sufficient exposure to the
21 nicotine, you needed the nicotine just to stay at this
22 level where you were before.

23 Originally the nicotine gave you a high --
24 I shouldn't say "you" -- gave a person a high, made them
25 feel good, up here; but after enough exposure, all the

26 nicotine could do is bring you back to normal; and the
27 flip side of that is without the nicotine, nervous,
28 angry, uptight, can't concentrate, bad mood.

3705

1 And so what happens after someone gets
2 hooked, and they truly get hooked on nicotine, is that
3 if the person doesn't have their hit to keep them up
4 here, the person falls down here; and my client, nice
5 little old lady grandmother, the drug addict, told us on
6 a Sunday when I was doing her deposition during this
7 trial and -- during a break I caught her coming up on
8 the elevator, and the lady's room wasn't downstairs, she
9 said, "Yeah, I went out and had three puffs; and yeah, I
10 feel better; and yeah, I'm not nervous; and yeah, my
11 head's together now; and yes, I can concentrate now."

12 And what she was telling us in regular
13 people words was what Neal Benowitz told us in
14 pharmacological words, that someone who smokes, to be at
15 the normal level, when they don't smoke, they go down
16 here and become a nervous wreck and their head isn't
17 together and they can't concentrate and they can't keep
18 it together and unbelievably -- and I am going to go
19 through some of these documents right after the break,
20 because we are just about on it, right?

21 THE COURT: Keep going a little bit longer.

22 MR. PIUZE: All right. But when we come back,
23 I'm going to show you some of these documents; but they
24 have been selling addictive drugs all these years, and
25 the reason this is important is, if it was licorice or a
26 Hershey bar and it was killing lots of people, you chuck
27 it; but this is something that's got its hooks into the
28 user and the manufacturers of this, including Philip

3706

1 Morris, as I will show you right after the break, knew
2 darn well, going back to the 1960s, that they were
3 selling an addictive drug.

4 And that's what allowed them to keep their
5 hooks in their best customers who gave Philip Morris
6 their hard-earned money for the great honor of buying
7 these cigarettes.

8 So I think this would be the time.

9 THE COURT: I think so too.

10 Ladies and gentlemen, you are admonished
11 not to discuss this case amongst yourselves or with
12 anyone else. Do not form or express any opinion on the
13 matter until it's finally submitted to you. We will be
14 in recess for 15 minutes.

15
16 (A recess was taken in the proceedings.)

17
18 (The following proceedings were held
19 in open court within the presence of
20 the jury:)

21
22 THE COURT: No, that isn't going to work.

23 MR. PIUZE: Most people couldn't see it anyway
24 from where it is.

25 THE COURT: Well, you will just have to move
26 it.

27 What we will do at 11:10, we will let you
28 know that you have 30 minutes remaining. Okay? So you

3707

1 don't have to be looking at the clock.

2 MR. PIUZE: No. Actually, the deal we made is
3 that at 20 minutes of 11:00, she's going to give me my
4 warning so I can maybe reserve a half hour for this
5 afternoon.

6 THE COURT: Well, that's what I thought we had
7 done. That's what I just said, we'd give you a half
8 hour left.

9 MR. PIUZE: Right. Right. I'm just going to
10 gauge how much I think they can take of me this
11 afternoon.

12 (Laughter.)

13 THE COURT: Okay, fair enough.

14 MR. PIUZE: My voice is fine.

15 Let's start here in February of 1969, and
16 there's Mr. Wakeham. Mr. Wakeham is one of those two
17 people that were on those film clips that we showed you.
18 Mr. Wakeham at one time was the chief scientist at R&D
19 at Philip Morris. Dr. Wakeham is the guy that told that
20 British interviewer, "Yeah, smoking anything in excess
21 can be bad for you. Too much applesauce can be bad for
22 you." Smoke and applesauce, what the heck.

23 Could I make that up? I mean, could I
24 ever say that with a straight face? He said it.

25 Here's what he had to say in 1969:

26 "I would be more cautious in
27 using the pharmic-medical model.

28 Do we really want to tout

3708

1 cigarette smoke as a drug? It
2 is, of course, but there are
3 dangerous FDA implications to
4 having such conceptualization go
5 beyond these walls."

6 Thank you, Dr. Wakeham.

7 MR. BLEAKLEY: I think the memorandum is to
8 Dr. Wakeham.

9 MR. PIUZE: Thank you, Mr. Dunn.

10 Four years earlier -- excuse me, not
11 true -- eight years earlier in 1961, Mr. Wakeham -- I
12 should say Dr. Wakeham -- himself wrote a memo, and
13 Dr. Wakeham wrote it to the boss of the company,
14 Mr. Cullman.

15 Let me just read what I consider to be the
16 pertinent part:

17 "The announcement of 'health
18 facts' such as that by Hammond at
19 the last American Cancer Society
20 meeting probably shifts a number
21 of people towards the low side,
22 but I have a feeling that the
23 distribution pattern of total
24 intake is not being changed very
25 much. "The cigarettes
26 which we are now growing -- the
27 Marlboro, the Winston, the Salem,
28 the Camel, and the Pall Mall --

3709

1 are all delivering approximately
2 30 milligrams of TPM or more with
3 about 6 percent nicotine content.

4 "As we know, all too often
5 the smoker who switches to a
6 hi-fi cigarette winds up smoking

7 more units in order to provide
8 himself with the same delivery
9 which he had before. In short, I
10 don't believe the smoking pattern
11 has changed much, even with
12 cancer scares and filter
13 cigarettes."

14 And when he says, "with a filter, winds up
15 smoking more units in order to provide himself with the
16 same delivery which he had before," the delivery is
17 nicotine.

18 So in '61 Wakeham wrote to the boss about
19 this, and in '69 one of scientists wrote to Wakeham, the
20 boss scientist, "We can't allow it outside of these
21 walls that what we are really selling here is a drug."

22 This is the same -- this is the same
23 Dr. Dunn at the Philip Morris research center, and he's
24 writing about why people smoke; and this document is
25 from 1972 and there's the exhibit number.

26 So there's the conclusion.

27 "The majority of conferees" -- this was a
28 conference that occurred down in the Caribbean. Part

3710

1 of this stuff was published for the world, part of this
2 was kept secret, and Dr. Benowitz talked about it.

3 "Without nicotine, the
4 argument goes, there would be no
5 smoking."

6 And then he goes through the details; and
7 on my remaining hour this morning, I am not going to do
8 that, but you know where to find it in the jury room.

9 He says the cigarette should be conceived
10 not as a product but as a package. The product is
11 nicotine. The cigarette is but one of many layers.
12 There's a carton, there's a pack, there's a cigarette,
13 there's smoke. The smoke is the final package.

14 Think about the cigarette pack as a
15 storage container for a day's supply of nicotine. Think
16 about the cigarette as a dispenser for a dose unit of
17 nicotine. It is readily prepped for dispensing
18 nicotine. Its rate of combustion meters out the
19 dispensing rate.

20 Think of a puff of smoke as a vehicle of
21 nicotine. A convenient 35 cc mouthful contains
22 approximately the right amount of nicotine. It is
23 highly absorbable. There is a 97 percent nicotine
24 retention.

25 So in 1972 these guys at Philip Morris R&D
26 were right along the path of knowing what Dr. -- not
27 only is it cold down here but you can't see either.

28 JUROR BEAL: I can see.

3711

1 MR. PIUZE: Excuse me.

2 -- what Dr. Benowitz said, this little
3 curve here -- do you want to talk about cigarettes?
4 Want to talk about nicotine? This curve. I can talk
5 about crack cocaine too. If you inhale the stuff, boom,
6 immediate hit; but if you use a patch or gum or if you
7 snort, it isn't nearly the same. Inhalating the smoke,
8 whether it's from crack cocaine or whether it's from a
9 cigarette, gives an immediate instantaneous powerful
10 hit.

11 And lest I forget, Dr. Farone told you

12 that urea was added to the tobacco at Philip Morris.
13 Animal urine, urea; and the reason is that when urea
14 gets heated to a certain temperature, it turns into
15 ammonia. That temperature is achieved by smoking a
16 cigarette.

17 And the urea that's put on the tobacco
18 turns into ammonia and the ammonia allows a supercharged
19 hit. It allows it to be ingested faster.

20 So this curve is even more so; and there's
21 going to be an instruction later on.

22 Incredibly, in the state for ten years,
23 there was immunity for the tobacco industry. I am going
24 to talk about that; but one thing that isn't immune is
25 when adulterants are added to products.

26 You heard Dr. Farone say urea was added to
27 this tobacco, and I didn't hear anyone disagree. There
28 are 600 scientists down there. They could have come

3712

1 down here and disagreed. I didn't hear it.

2 Let's go to 1972. Philip Morris:

3 "Although more people talk
4 about 'taste,' it is likely that
5 greater numbers smoke for the
6 narcotic value that comes from
7 the nicotine."

8 And Dr. Benowitz agreed with that. He
9 said when people talk about taste, they are really
10 talking about the drug nicotine.

11 Let's go to 1980. This is from
12 Dr. Osdene, and this goes to Seligman, the head of
13 research and development, and the directors, and this
14 has to do with the nicotine program.

15 "This program includes both
16 behavioral effects as well as
17 chemical investigation. My
18 reason for this high priority is
19 that I believe the thing we sell
20 most is nicotine."

21 Let's go to 1980. This is written over at
22 The Tobacco Institute, and this has to do with a news
23 reporter named Victor Cohn who wrote a surprise story.
24 The National Institute of Drug Abuse wants to add the
25 word "addictive" to cigarette warnings.

26 And here's the reply. Excuse me. Here's
27 the comment, and I've got this two different ways. We
28 have blanked out a name here.

3713

1 "As" so and so "reminds us,
2 I am told, the entire matter of
3 addiction is the most potent
4 weapon a prosecuting attorney" --
5 that would be me today here --
6 "can have in a lung
7 cancer/cigarette case. We can't
8 defend continued smoking as 'free
9 choice' if the person was
10 'addicted.'"

11 So now in 1980, I didn't say that; they
12 said it. This will be in the jury room. The small
13 version will be in the jury room.

14 The thing is, I disagree. As the
15 prosecuting attorney in this case, I disagree with that
16 statement. Because even though this isn't licorice,

17 even though this isn't a candy bar, it isn't just the
18 nicotine that hooks some of them, because there was
19 something else going on; and what was going on was
20 deceit.

21 Neal Benowitz and David Burns and Paul
22 Slovic -- Paul Slovic, professor of psychology. They
23 stipulated to the fact that he was a competent
24 psychologist, professor of psychology, expert in risk
25 assessment.

26 And I shouldn't have to say they could
27 find a psychologist if they wanted to bring one. They
28 could find a pharmacologist if they wanted to find one.

3714

1 They know where to find anyone if they want to bring
2 them.

3 But all three of those people talked one
4 way or another about the concept of cognitive
5 dissonance; that if someone is doing something, like a
6 drug addict is doing something that they know at some
7 level is bad for them, they know it's bad for them at
8 some level, but they are addicted, and there's a tug,
9 "What do I do? What do I do?"

10 They look for reasons to justify or
11 rationalize their behavior; and some of the witnesses
12 called it "cognitive dissonance." Some of them called
13 it "dissonance"; but they grab onto something to justify
14 their behavior.

15 Now, it didn't take me to figure that out,
16 and it didn't take the fine scientists that came here to
17 figure that out because Philip Morris figured it out.

18 The Surgeon General's report came out in
19 early January of 1964, and the Surgeon General's report
20 was something that was -- remember the original scare in
21 '53? Cigarette sales went down for a while.

22 The cigarette industry countered with the
23 research committee and the TIRC and "We won't hurt you"
24 and the Frank Statement and all that, and cigarette
25 sales went back up.

26 Well, right after the Surgeon General's
27 report came out in 1964, George Weissman, the officer
28 and director of Philip Morris, Inc., said to Joseph

3715

1 Cullman, III, the chairman of the board of Philip
2 Morris, Inc., "We must provide some answers which will
3 give smokers" -- this case is on some levels about Betty
4 Bullock, lots of levels, and on lots of levels it's a
5 lot bigger than Betty Bullock, but right now let's just
6 talk about Betty Bullock.

7 In the near future, we must provide some
8 answers which will give Betty Bullock a psychological
9 crutch and a self-rationale to keep smoking.

10 So it wasn't just the scientists called by
11 the plaintiff in here to explain. Philip Morris knew
12 it. "We're going to give them a psychological crutch.
13 Not only do we have them hooked with a drug, but while
14 this dissonance is going on, let's give them a rationale
15 to keep going."

16 Well, I have all of these documents, some
17 of which you've seen, some of which you haven't -- I've
18 got my eye on the clock, sort of making a judgment call
19 on the fly here -- from the TIRC, from the CTR, from
20 Philip Morris.

21 It's just statistics. It's just

22 statistics. Nothing is proven. We need more research.
23 It's just statistics. We don't believe lung cancer is
24 caused by tobacco. There's no proof. There's no
25 medical proof. There's no scientific proof. People
26 disagree. That's just statistics. Those statistics are
27 wrong. There are doctors that disagree. We need more
28 research.

3716

1 Well, there's enough crutches there for a
2 centipede.

3 March 1965 press release, Bowman Gray, the
4 head of R.J. Reynolds -- that was the biggest of the
5 companies at the time -- appearing before the United
6 States Senate as a spokesman for the nine cigarette
7 manufacturing companies.

8 The industry is profoundly conscious of
9 the questions concerning smoking and health. Many of
10 the scientists are of the opinion it has not been
11 established that smoking causes lung cancer. A great
12 deal more research is necessary.

13 And here's a bottom-line kind of thing
14 that I alluded to before. The tobacco industry is
15 clearly a vital sector of this nation's economy. He
16 referred to millions of people who depend either
17 directly or indirectly upon tobacco for their
18 livelihood.

19 And there's the tug again: Money versus
20 health. Money versus life. The economy versus people.
21 I'm not going to show you all these, but how about a
22 quick sampling.

23 1957. No substance has been found in
24 tobacco known to cause cancer in human beings.

25 There's more. When I'm not around, no
26 lawyers around, you can read it, take a look at it.

27 1963. Here's the tobacco industry
28 president. They got the former director of the U.S.

3717

1 Information Agency to be the president of The Tobacco
2 Institute.

3 Tobacco people have a double interest in
4 this matter. First, as human beings we are interested
5 in the health of our fellow man. Second, we have a
6 natural interest in the future welfare of our industry
7 and our customers.

8 The case against smoking, right here,
9 still rests largely on statistics whose meaning is
10 questioned by medical statisticians. Intensive clinical
11 and lab research has failed to provide the verification
12 necessary. Inhalation of tobacco by laboratory animals
13 has failed to produce lung cancer.

14 They didn't have to hire any laboratory
15 animals. They had an experiment going on out in the
16 streets of New York City, the towns of South Dakota,
17 here in Los Angeles.

18 Here, 1965, year-end statement from The
19 Tobacco Institute. Research hasn't established whether
20 smoking is casually involved in diseases, such diseases
21 as lung disease and heart disease.

22 They didn't know who Sir Richard Doll was
23 back then, but they really knew what was going on;
24 because in 1970, in a letter to Senator Earle Clements
25 of The Tobacco Institute -- now The Tobacco Institute
26 doesn't have a former U.S. Information Agency head; now

27 now they have a former U.S. Senator head.

28 Horace Wakeham from Philip Morris says,

3718

1 Nobody believes we are interested in the truth on this
2 subject. The fact that a multibillion dollar industry
3 has put up 30 million bucks for research over a ten-year
4 period cannot be impressive to a public which at the
5 same time is told we spend upwards of \$300 million
6 dollars in one year for advertising.

7 While I am on that, I would like to
8 comment. Philip Morris brought one witness to this
9 trial. A nice guy, country, pleasant, nice face to put
10 on the corporation, and I think he said, "Gee, on this
11 one project, we spent half a billion bucks."

12 What he didn't say is in one year, now,
13 they are spending \$10 billion a year for advertising,
14 \$10 billion a year. So this little refrain here,
15 30 million bucks for research and \$300 million for
16 advertising, just take it up by inflation, it's the same
17 story right now today.

18 Here's an internal memo having to do with
19 a CTR meeting. CTR is the best and cheapest insurance
20 the tobacco industry could buy. This is the -- this is
21 the Council for Tobacco Research. These are the people
22 guarding the customers? From the inside, the cheapest
23 and best insurance the tobacco industry can buy and
24 without it, the industry would have to invent it or
25 would be dead.

26 Which brings me almost to where I want to
27 go. I know you saw this, spent a lot of time with this
28 with Dr. Farone. 1984. This is the tobacco industry

3719

1 spokesman going to the United States Congress. I'm not
2 going to open it. We have been through it. We need
3 more research. We don't know the cause of cancer. It's
4 just statistics. No one knows what's going on. It will
5 take more time.

6 Here's where I want to go, right here.
7 This is 1972; and as far as I'm concerned, if there's
8 one document, if we can distill this case into one
9 document about devious, disgusting, despicable behavior
10 for which the entire group should be taken outside,
11 this -- this is it; because this is where someone
12 actually puts down in writing what it's all about.

13 Don't forget, please don't forget, that
14 Betty Bullock is a drug addict, and at that time there
15 were 50 or 60 million other Americans who fit into that
16 mold for this particular drug, and she had a little
17 cognitive dissonance. She heard -- she's no dummy. She
18 heard that the Surgeon General said things. She really
19 loved those cigarettes. What to do? Right here.

20 When Philip Morris' boss said we are going
21 to give someone a psychological crutch, here it is.
22 That's 1972. For nearly 20 years -- and because I can
23 subtract, the nearly 20 years gets us right to the Frank
24 Statement, doesn't it? Right to 1954, doesn't it?

25 For nearly 20 years, this industry has
26 employed a single strategy to defend itself on three
27 major fronts; litigation, politics, and public opinion.
28 While the strategy was brilliantly conceived and

3720

1 executed over the years, helping us win important
2 battles, it is only fair to say that it is not, nor was

3 it intended to be, a vehicle for victory. On the
4 contrary, it has always been a holding strategy
5 consisting of -- let's stop here.

6 There's your psychological crutch for
7 Ms. Bullock, for millions and millions and millions of
8 other people who paid good money to suck poison into
9 their systems, who are addicted to cigarettes, and all
10 they needed was a little rationale, a little
11 psychological crutch, a little justification to keep
12 going.

13 And so with live, real human beings, real
14 lives in the balance, these guys decided they were going
15 to create some doubt about the health charge without
16 actually denying it.

17 14 years later -- that's 30 minutes?

18 Thank you.

19 '72, they have been at it for almost 20
20 years. '84 to the U.S. Congress, more research is
21 needed. You have seen this before. I don't have time
22 to read it. More research is needed. It's only
23 statistics. People disagree. We need more research.
24 Give us some more time.

25 And FACE THE NATION, 1971, CEO of Philip
26 Morris, this is -- this time this is Joseph Cullman,
27 III, this time. We do not believe that cigarettes are
28 hazardous. We do not accept that. They have not proved

3721

1 to be unsafe.

2 So I think now is the time I need a
3 volunteer -- do I have a volunteer? For a technological
4 wizard like you, this is the kind of thing you can do
5 without a computer. Just hold that, would you?

6 THE COURT: No, Counsel. That still isn't
7 going to work. It doesn't matter that there are people
8 doing it. I need to see the jury.

9 MR. PIUZE: Just get it on that table back there
10 the way I -- just put it up on that table right there,
11 please. Yes.

12 We are sort of up here. This is sort of
13 the website with the admission; and here's the -- here's
14 the Roper proposal about creating doubt, right in here,
15 and looking back this way for 20 years. About 20 years.

16 Do you want to hold that up a little
17 further, just a little further.

18 Because right in here when they started
19 creating doubt; this 17-year-old girl who I now
20 represent, who never had a cigarette in her life, who
21 was living out in the prairie, whose grandfather was a
22 vet, took care of horses, she was looking at these
23 glamour magazines, and she saw something that was
24 really, really, really glamourous to her, which I'm
25 going to talk about later; but this is where the 20
26 years starts, right here, there with these beautiful,
27 beautiful, artistic, gorgeous ads.

28 Some of us have kids, and you tell the

3722

1 kids, "If a stranger ever comes to you and says, 'Here's
2 a piece of candy. Get in my car. . .'" that's what this
3 is. Because they were on notice right here, and before
4 that, there was a good chance what they were selling
5 killed people.

6 And so they dressed it up in the most
7 beautiful, beautiful, beautiful package and advertising.

8 Anyway, here's something to think about.
9 From 1972 looking backwards at 20 years' worth of
10 creating doubt, let's go forwards. We can come all the
11 way up to 1988 where Bible hadn't figured out yet that
12 one person had ever died from smoking.

13 Here's what happened in there. Just
14 multiple 40,000 a year of cigarette-related deaths in
15 this state alone, just multiply 11,500 a year for any
16 given decade for lung-cancer deaths attributed to
17 smoking in this state alone, and they kept making money.

18 And when this changed, when they were
19 cornered, this was less -- see, Bible spoke in February
20 of '98, testified under oath not one person had ever
21 died from smoking that he knew of -- and so we are about
22 less than three years later; in those three years when
23 this magical thing happened so that they figured it out,
24 we don't know what it is because there ain't any
25 evidence on it.

26 The one thing that Philip Morris forgot to
27 put on that website is an apology to those 11,500 people
28 that year, the 115,000 that decade in the state of

3723

1 California; and another thing that they didn't put on
2 the website was an apology to Ms. Bullock, and this is
3 the forum today for Philip Morris to apologize to
4 Ms. Bullock.

5 Anyway, by creating doubt about the health
6 charge without actually denying it, in this prosecuting
7 attorney's view, the people that ran the tobacco
8 industry in this country and Philip Morris specifically,
9 dug the hook in deeper, not just to Ms. Bullock but to
10 that other 95 or 96 or 97 percent of smokers who cannot
11 quit, because they gave these people -- not even my
12 words -- a psychological crutch, a self-rationale to
13 keep smoking.

14 "It isn't proven."

15 MR. BLEAKLEY: Your Honor, I object to counsel
16 expressing his personal views. "In this prosecuting
17 attorney's view."

18 MR. PIUZE: I will take that back. I apologize.

19 THE COURT: All right.

20 MR. PIUZE: It could be said from a prosecuting
21 attorney's view that with that cognitive dissonance
22 going that we heard about and that was not disputed from
23 the defense side, by giving this psychological
24 crutch, this self-rationale, "It isn't necessarily bad.
25 It isn't proven. We don't believe it. The jury's out.
26 It's just statistics. We're looking into it. There is
27 no proof," they dug the hook in deeper, and it dug the
28 hook in deeper for millions of people. It dug the hook

3724

1 in deeper and it ruined millions and millions and
2 millions of lives.

3 Anyway, thanks for holding that up. I
4 appreciate it.

5 If -- I was thinking about putting some of
6 those jury instructions on the Elmo. I am not going to
7 do it, all these jury instructions dealing with fraud.
8 It's the most classic example of fraud you can ever
9 imagine. The most classic example of fraud, making
10 false promises and never keeping them. Making
11 statements for which there was no basis. Trying to get
12 people to rely on what you're saying to make money.

13 Advertising. I want to start with
14 Ms. Bullock and come right up to today. Because of time
15 constraints, I will remind you, take 30 seconds to do
16 it, that until 1970, when someone turned on a television
17 set, you could not have possibly escaped cigarette
18 advertising.

19 Mr. Goldstein, are you ready to run that
20 projector?

21 And while he's setting that up, see these?
22 I've talked about them. I've mentioned them. They are
23 in the jury room. This is the year when Ms. Bullock
24 started smoking right here. This is for a product which
25 they knew was deadly.

26 You see the message? See the message?
27 This is the first cousin to, "Here's some candy. Get in
28 my car." This is from people who know that this stuff

3725

1 kills.

2 Okay. Go ahead. Shoot. I'd like you to
3 see three Marlboro ads. I want to stop after the first
4 ad so I can make a comment.

5 (Videotape played.)

6 MR. PIUZE: Stop. I'm sorry. Thank you.

7 MR. GOLDSTEIN: That's okay.

8 MR. PIUZE: Please stop. Just back that up a
9 touch.

10 This guy is about to prove that this stuff
11 is addicting because he's about to say that sometimes
12 you forget to eat, but you never forget to -- go.

13 (Videotape played.)

14 MR. PIUZE: Because I have limited time, just do
15 one of the western ones, please.

16 (Videotape played.)

17 MR. PIUZE: So while he's doing that, because
18 I'm -- I've got my eye on the clock, I'll just try to do
19 this.

20 Ms. Bullock was the daughter of a horse --
21 or the granddaughter of a horse vet; and one of the
22 continuing themes that she said when she saw these ads
23 was this gorgeous outdoor stuff that was being shown
24 with the horses and she was drawn to the horses.

25 But I'm going to read a document in a
26 minute or two that may put this in context. The stuff
27 that was being sold with these ads was known to be
28 dangerous; and the stuff that is sold with these ads has

3726

1 these ads of pure, clean, healthy -- that one's too
2 pure, clean, and healthy -- outside, lovely.

3 While I've got Mr. Goldstein, I want to
4 show one other thing on the video, slightly out of
5 context, and then I am going to finish up.

6 THE COURT: I want to see counsel at the bench
7 as soon as you have shown the video.

8 MR. PIUZE: Yes, sir.

9 (Videotape played.)

10 (A discussion was held at the bench,
11 not reported.)

12 MR. PIUZE: I've got a packet of stuff here
13 about Nicorette gum, that Philip Morris tried to
14 suppress it. I'm not going to talk about it. You'll
15 have it in the jury room. Remember it.

18 And the thing I'm looking for now -- hard
19 to believe I can't come up with it -- is this.
20 There's been an issue that's been going on forever and
21 ever, going way back to there and before. It's still
22 going on. That's March 1978.

23 It's from The Tobacco Institute to the
24 U.S. House of Representatives; and what it says is that
25 they are unaware that any of their companies are
26 peddling to kids, which, of course, 1978 was a total
27 and complete lie, because you've got all of these
28 documents which you've already seen where they are

3727

1 attracting kids down to the age of 12 to get their
2 marketing habits.

3 This continues to this day. There are
4 three documents in evidence that were discussed with
5 Dr. Goldberg. That's one of them. That's one of them.
6 That's one of them.

7 And the bottom line on all of them is that
8 the advertising plays what's called a "mediated
9 relationship" in getting people to smoke. The sheer
10 amount of expenditures for advertising and promotion
11 assures that young people will be exposed to these
12 messages on a massive scale, and it is clear that
13 society's efforts to discourage young people from
14 smoking are obstructed and perhaps fatally undermined by
15 the industry's efforts to portray the dangerous products
16 in a positive light.

17 This next paragraph -- when I'm talking
18 about this, remember after all these ads I showed you
19 from when Ms. Bullock was a 16-year-old kid and
20 17-year-old kid on the cusp, she wasn't smoking yet, but
21 she remembers these ads.

22 " In sum,
23 portraying a deadly addiction as
24 a healthful and sensual
25 experience tugs against the
26 nation's efforts to promote a
27 tobacco-free norm and to
28 discourage tobacco use by

3728

1 children and youths."

2 In this case, there are three different
3 questions that you are going to answer where the
4 questions are limited to what occurred before 1969, and
5 it has to do, most of them, with advertising, and it has
6 to do with warnings, but not all of them do.

7 And for those causes of action that are
8 not -- for those questions that you are going to be
9 answering that are not limited to 1969, keep in mind
10 that the advertising and promotion of a deadly and
11 addictive product goes on at the rate of 10 billion,
12 with a B, dollars a year. They know what it is. They
13 admit what it is. "Take this candy and get into my
14 car."

15 Now I'm going to use -- the plan was, I
16 talk -- I was going to save a half hour more this
17 afternoon. The plan didn't work. I'm going to encroach
18 into some of the half hour and save a little bit for
19 this afternoon.

20 Betty Bullock, farm girl, high school
21 education, wanted to come to the big city, born in a
22 different era. Smoking was glamorized to the max.

23 Smoking was advertised to the max. Athletes advertised
24 it. Movie stars advertised it.

25 Depending on who you listened to, 50 or 60
26 percent -- I think it's 60 percent of the men and a
27 total of 50 percent of the adult population in the
28 country smoked.

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1 You heard from Mr. Bleakley in opening
2 statement that the President of the U.S. smoked, which
3 is true. Lots of Presidents of the U.S. smoked.
4 Everyone smoked and there was nothing wrong with it,
5 and there were no warnings about it and there was no
6 health scare for most people about it.

7 And I heard in opening statement from the
8 defense that she should have known by '56 when she
9 picked up her first cigarette that this stuff was bad
10 for you; and when I heard that, I was just thinking if
11 she should have known, why in the heck didn't the
12 industry scientists know? Why didn't Philip Morris'
13 people know? Why didn't the president know? Chairman
14 of the board know? Chief research scientist know?

15 But at any rate, she's worked all of her
16 life. There's nothing fancy about her. She's a tough
17 cookie. She got married and she was cute. She had this
18 guy who came out here, joined the Marine Corps to be
19 near her. They got married, had a baby.

20 She worked two jobs and helped the mom
21 take care of the motel and did whatever you do. I don't
22 know much about when you have babies and cleaning and
23 do all that stuff. She did it all; and after two and a
24 half or three years, she was so burned out, she just
25 couldn't handle it any more and she left and came back
26 here.

27 Now, part of this is about personal
28 responsibility. Personal responsibility is something

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1 that I mentioned a lot about during voir dire, and every
2 single one of you agreed that personal responsibility is
3 a two-way street.

4 I'm saying that Betty Bullock is a
5 personally responsible member of our society, a good
6 contributing member of our society. She came back
7 here -- and as it was established by Mr. Leiter in that
8 deposition -- when there weren't that many single moms
9 who worked. She was a single mom who came back here,
10 got a job, established a life, worked, worked all the
11 way through her second marriage doing word-processing or
12 whatever, data-processing.

13 When her dad got sick, of the seven kids,
14 she took care of the dad. She quit her job for three
15 years and took care of her dad while he died; and she
16 liked that enough so that she got her CNA certificate,
17 and that's what she was doing; and she worked right up
18 to the time that she was diagnosed with lung cancer, all
19 the way right up to the time.

20 She passed 60. She could make \$10,000
21 bucks a year before the government would infringe on her
22 social security, and that's what she was doing.

23 Ms. Bullock tried -- listen to Dr. Rodas,
24 you want to listen to her daughter, you want to listen
25 to her -- and tried and tried to stop smoking, and to
26 Mrs. Bullock's ultimate shame and disgrace and
27 mortification -- and she said these words before she was

28 diagnosed with lung cancer. This ain't after the fact.

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1 This was back when she was seeing Dr. Rodas -- "I'm
2 ashamed, embarrassed, guilty."

3 She was one of the 95 percent who couldn't
4 quit.

5 So I think Ms. Bullock was a personally
6 responsible member of our society; and since she has
7 been diagnosed with a fatal disease, what has she done?
8 First, in Dr. Vandermolen's words, she's been a good
9 trooper. Second, in her daughter's words, she hasn't
10 been a burden.

11 She goes and throws up when no one is
12 around. She -- and all the secondary effects of this
13 treatment stink. She's had nausea and diarrhea for a
14 year and a half. Her hands are numb and her feet are
15 numb and she's got the chemo-brain and all the nine
16 yards. It's a disgusting way to go. A slow, painful,
17 way to go, but she as kept her mouth shut and she's been
18 a good trooper and she hasn't been a burden on anyone.

19 And she's done one other thing as a
20 responsible member of society, for which I applaud her.
21 She's stayed alive long enough to do this. This isn't
22 easy. You got six months to live, and in her case, she
23 didn't get -- ask Dr. Vandermolen. Most of his patients
24 get like a vacation from the treatment. They respond to
25 it in a certain way so they can stop the treatment and
26 maybe they can get six months.

27 She never got the vacation. This lady has
28 suffered from the treatment for a year and a half. She

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1 has outlived 99-point-something percent of other people
2 with this disease, according to Sam Hammar.

3 And so here she is. She's hung on. She's
4 got two or three more months left to be alive, and
5 she's been -- she is here because she, just the simple
6 farm girl from South Dakota with a high school
7 education, doesn't take grief.

8 And you saw some of that in that
9 videotape. She ran into a problem with some insurance
10 company and she went after them and she got them.

11 Okay. She is a responsible member of
12 society. She's here through me. She's here while she's
13 still alive to say, "The heck with them." And the words
14 she used in that videotape is she couldn't conceive of
15 human beings being so dirty filthy rotten to do this.
16 Those aren't the words I'd use. But "dirty, filthy, and
17 rotten" gets it across.

18 Never could believe that an American
19 company would do something like this.

20 Anyway, at the end of this verdict form,
21 if you find liability against Philip Morris on any one
22 of, I think, eight different theories, every single one
23 of which they deserve to be found liable on, every
24 single one, you are asked to compensate Ms. Bullock.

25 And the compensation includes, one,
26 medical bills, and you've got medical bills. They were
27 compiled up to about \$321,000, and there's an additional
28 \$8,000 charge in there too.

3733

1 Two, wage loss. All you got to do is
2 multiple by 10,000 bucks a year.

3 Three, what's called "general damages."

4 Well, general damages fall into two parts. The first
5 part is the suffering that she's had so far. I think
6 Dr. Vandermolen discussed it better than I could. "The
7 suffering they go through is so bad, I think they should
8 smoke because it's so addictive that breaking the
9 addiction is another suffering and why put them through
10 it?"

11 Just think of 18 months, just think of a
12 day when one felt really, really, really crummy and
13 multiply that times 18 months straight; and then think
14 about 20.8 years in the future, because she is robbed of
15 20.8 years of her life. Today in America she should be
16 living until she is about 84 years old.

17 And what's the value of a person's life
18 for 20.8 years? Those coal miners were trapped in
19 Pennsylvania there, whatever it took. When one of our
20 military pilots is in a jet that has a problem, what's
21 the choice? To try to land the \$50 million jet and risk
22 your life or to bail out and say, "Adios, jet"?

23 I'm not going to suggest a figure for the
24 20.8 years of Ms. Bullock's life. She is a good
25 person. She had that grandchild. She helped Jodie have
26 that grandchild. She deserved to be with that
27 grandchild every bit as much as Whidby deserves to be
28 with his grandson.

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1 And then last but far from least, there's
2 a question at the end that asks whether -- it sets up
3 phase two of this trial -- whether they should be
4 punished, whether they should be made an example of; and
5 in order to answer that question, you have to answer it
6 by a slightly different burden of proof.

7 So for my last stand here this morning,
8 everything I've discussed so far, were they liable? Do
9 they owe her some money? Should she be compensated?
10 The burden of proof is like this. We start off even.
11 These are the scales of justice, dead even.

12 In a criminal case, if I were a real
13 prosecuting attorney in a criminal case in the criminal
14 court building, the burden of proof is beyond a
15 reasonable doubt, and that's because we are either going
16 to send someone to jail or take their life; and in
17 America theoretically, theoretically, life is more
18 important and liberty is more important than property.

19 As we have seen here for two hours this
20 morning, ain't necessarily so.

21 But over in the criminal courts building
22 before you can take a citizen's or a non-citizen's or a
23 resident's life or liberty, you have to do so beyond a
24 reasonable doubt. That's the burden of proof. Beyond a
25 reasonable doubt. In my own mind, I visualize it as
26 98 or 99 to 1 or 2.

27 But here no one's life is being taken.
28 The lives have already been taken. The only person

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1 whose life is being taken is Betty Bullock. Liberty
2 isn't being taken for Philip Morris; and so the burden
3 of proof is called a "preponderance of the evidence,"
4 which side preponderates.

5 If one side of the scale is slightly more,
6 here's your winner. If it winds up dead even at the
7 end, the defense wins.

8 So by a preponderance of the evidence, are

9 they are liable to Betty Bullock and should she be
10 compensated? That is kind of a no-brainer.

11 But this last question is a little
12 different, because this last question has to do with
13 punishing them; not in a criminal way, in a civil way,
14 and making an example of Philip Morris; and the burden
15 of proof here is called "clear and convincing evidence."

16 You've got the words and the words say
17 what they are, but I visualize clear and convincing
18 evidence like this. 60-40, 70-30, 75-25, something like
19 that, but it's someplace in between a preponderance and
20 beyond a reasonable doubt, and it should be, because
21 this is for punishment.

22 And although no one is going to jail and
23 although no one from Philip Morris is going to get their
24 lives taken, it's for punishment; and I say that by
25 clear and convincing evidence, Philip Morris deserves
26 not only to be punished but to be made an example of,
27 and Philip Morris says, "Gee-whiz, what's the big deal?
28 We've changed. We admit it now, so what the heck."

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1 And to me that's like the police running
2 after someone for blocks and blocks and blocks and
3 blocks and blocks and blocks and blocks and years and
4 decades. "Okay. I give up. So what's the big deal? I
5 gave up, so it doesn't matter, right?" Wrong.

6 Not only should Philip Morris be punished,
7 but Philip Morris should be made an example of. All you
8 got to do is pick up the papers. If this corporation
9 could get away with this for 40 or 50 years, I guess
10 it's not surprising that other corporations wind up
11 doing whatever they do.

12 MR. BLEAKLEY: I object to this, your Honor.
13 This is improper.

14 THE COURT: Overruled.

15 MR. PIUZE: This deterrence, to deter future
16 conduct, is for everyone to see out there; and if this
17 stuff is allowed to go unpunished, if this stuff is
18 allowed to go unpunished, it's open season.

19 Thank you very much for listening.

20 And your Honor, thank you for the time. I
21 appreciate it.

22 For Mrs. Bullock, I appreciate your
23 attention during this argument as much as I did during
24 the trial. Thank you.

25 THE COURT: Give me just a moment.

26 (A pause in the proceedings.)

27 THE COURT: You have reserved 20 minutes.

28 MR. PIUZE: Yes, sir.

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1 THE COURT: Okay. You may begin.

2 MR. BLEAKLEY: May we have a few minutes to
3 clean up some of these exhibits?

4 THE COURT: Indeed, you may. I expect the jury
5 would not be terribly offended if we took a short break.

6 Let's keep it to a ten-minute break,
7 folks.

8 THE COURT: Again, keep in mind the admonition.

9 Do not discuss the case. Do not form or express any
10 opinion. See you back in ten minutes.

11 (A recess was taken in the proceedings.)
12

14 (The following proceedings were held
15 in open court within the presence of
16 the jury:)

17
18 THE COURT: The record will reflect the jury is
19 present and in the box. Counsel is present.

20 Mr. Bleakley, you may begin your closing
21 argument.

22 MR. BLEAKLEY: Thank you, your Honor.

23 THE COURT: You're welcome.

24 MR. BLEAKLEY: Good morning, ladies and
25 gentlemen.

26 (All respond.)

27
28 * CLOSING ARGUMENT

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1
2 BY MR. BLEAKLEY:

3 I want to start by joining with Mr. Piuze
4 in thanking all of you for your willingness to serve on
5 this jury.

6 I know there isn't a one among you that
7 hasn't figured out already that we aren't really going
8 to take 40 days. I know you are probably thankful for
9 that, depending on how long, of course, you are in the
10 jury room; but I have been doing this for almost 40
11 years, and I have never seen a jury that has been as
12 attentive and as courteous as you all have.

13 So I definitely, on behalf of Maury Leiter
14 and our client Philip Morris and myself, I want to thank
15 you.

16 Now, why are we here? Why are you here in
17 this case? Not the Engle case in Florida, the case in
18 Minnesota you heard about, but why are you here in this
19 case? Are you here to deal with the question of whether
20 or not Philip Morris should still be making and selling
21 cigarettes? Whether or not Philip Morris should still
22 be making Benson & Hedges 100s? No. That is not why
23 you're here.

24 Remember Dr. Farone? The good Dr. Farone
25 volunteered more than once that Philip Morris should
26 have gotten out of the cigarette business years ago in
27 his opinion, and that volunteered testimony was stricken
28 from the record by the judge; and at the conclusion of

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1 Dr. Farone's testimony, you were read an instruction
2 which also appears in your book.

3 "The sale of cigarettes is
4 and has been at all times a
5 lawful activity in this State.
6 Congress has determined that it
7 is legal for Philip Morris to
8 make, advertise, and sell
9 cigarettes. You cannot find
10 Philip Morris liable for
11 plaintiff's injury, nor can you
12 punish Philip Morris solely
13 because it makes, advertises, or
14 sells cigarettes."

15 That is not why you are here. Only
16 Dr. Farone -- you didn't hear any of the public health
17 officials who came here and testified that it would be
18 good public health policy to outlaw the manufacture and

19 sale of cigarettes. That's not what this case is all
20 about.

21 It's also not about whether Philip Morris
22 ought to be allowed to use glamorous and appealing
23 people in its advertising. That too was and is lawful,
24 even today in 2002. Where you can advertise has been
25 restricted over the years, but there is no law against
26 Philip Morris' using glamorous and appealing people in
27 its advertising.

28 This is what this case is about. This is

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1 the general verdict form that the court read to you
2 yesterday. It's in the back of your jury books. When
3 you go into the jury room, you are going to be asked
4 eight questions; and every one of them asks whether
5 something allegedly wrongful, not the manufacture and
6 sale of cigarettes or the advertising with glamorous
7 people, but some wrongful conduct by Philip Morris
8 caused the plaintiff's injury.

9 I ask you when you get back there, look at
10 these. Every single one of these questions that you're
11 being asked is wrongful conduct caused the plaintiff's
12 injuries. That's what this case is about.

13 Is this particular smoker in this case,
14 nowhere else, just the one in this case, is she entitled
15 to recover money? How long did we have to wait during
16 Mr. Piuze's closing argument before we heard the words
17 "Betty Bullock"?

18 This case is about whether Mrs. Bullock is
19 entitled to recover, and she isn't. The evidence that
20 you've seen and heard over the last few weeks
21 established that Mrs. Bullock knew that smoking was
22 risky, that she knew that it was dangerous, that she
23 knew for 30 years that cigarette smoking was actually
24 damaging her health even as she did it. She didn't
25 really try to quit until late 1998 -- until the late
1990s, I mean. I will go over all of this in a little
while.

28 And when she did make a decision to quit,

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1 she did quit before she learned she had lung cancer.
2 Even if, as I suspect, some, many, most of you will
3 disapprove of some of the things that Philip Morris has
4 said and done over the years, this particular plaintiff
5 is entitled to recover only if she has proven, and it
6 was her burden to prove, that some wrongful conduct by
7 Philip Morris is what actually caused her injury.

8 And I will come back to that as well.

9 Mr. Piuze says, "Wait a minute. What
10 about all that bad conduct? Don't we have to deal with
11 all that bad conduct?" I repeat: Only if you find that
12 it was wrongful and it is what caused this particular
13 smoker to take up or continue smoking, this particular
14 smoker's injuries.

15 You'll recall back in my opening statement
16 a few weeks ago, I acknowledged that Philip Morris had
17 made a lot of mistakes and done some things wrong, had
18 said and done things it shouldn't ought to have said and
19 done, and I don't think there's any question about that
now.

21 Maybe that wasn't even a strong enough
22 word to use for some of the things that you have seen
23 during this case. Some of the testimony or statements

24 and interviews that you heard some of these people say
25 during the course of this trial probably made you cringe
26 a little. I don't blame you.

27 But I'm not here, Mr. Leiter wasn't here,
28 we didn't during the course of the trial and I'm not

3742

1 going to here today, go back in time and defend all of
2 the things that Philip Morris has said and done.

3 By the way, it was an implication in
4 something that Mr. Piuze said about all of this evidence
5 that has come in during this trial wasn't discovered
6 until 1998. Not so. A lot of this evidence, maybe even
7 most of it, has been around for years; but that's not
8 the point.

9 The point is that for me to spend in this
10 argument here today all the time trying to defend the
11 things Philip Morris had said and done would ultimately
12 be a distraction from the issue that you have to decide
13 in this case; which is, what is the answer to these
14 eight questions? Did -- was plaintiff's injury caused
15 by a defect in design? Was plaintiff's injury caused by
16 a negligent design of defendant's cigarettes? Was
17 plaintiff's injury caused by a fraud?

18 Those are the questions that you have to
19 decide today; and in order to decide them, you need to
20 look at Betty Bullock's smoking history and what she
21 knew and what she didn't know and when she learned it
22 and why she made the decisions she made.

23 And I'm going to suggest to you that when
24 you go back in the jury room and you talk to each other
25 and you review the evidence, you're going to find the
26 same thing I said to you back at the beginning of the
27 trial; which is, this particular smoker, Mrs. Bullock,
28 made the decision again and again that "I am an adult.

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1 This is my business."

2 She knew it was dangerous. She knew it
3 was hurting her even as she did it, and she didn't
4 really try to quit until the late 1990s and late 2000
5 when she actually succeeded, before she learned that she
6 had lung cancer.

7 Now, the fact of the matter is for all the
8 things that Philip Morris has said and done, today
9 Philip Morris acknowledges unqualifiedly that cigarette
10 smoking causes cancer and other diseases.

11 I did it again. I am not going to say
12 this is why I'm a lawyer.

13 This is the website that Mr. Piuze talked
14 about during his closing argument.

15 "We agree with the
16 overwhelming medical and
17 scientific consensus that
18 cigarette smoking causes lung
19 cancer."

20 And further on down the page.

21 "We agree with the
22 overwhelming medical and
23 scientific consensus that
24 cigarette smoking is addictive."

25 Today, late -- you can agree that it
26 should have done before, but the fact of the matter is
27 that today it does not deny that smoking causes serious
28 and fatal diseases and is addictive; and Philip Morris

1 can never take that back. The cat is out of the bag.
 2 It can never take it back.

3 In addition to that, ladies and gentlemen,
 4 we have warnings everywhere. We have the anti-smoking
 5 campaign that has been going on since the 1964 Surgeon
 6 General's report, the anti-smoking campaign here in
 7 California that goes way beyond what has been done
 8 elsewhere this the country. We have the fact that
 9 smoking rates have declined dramatically over the
 10 years.

11 Remember this exhibit? I showed it to you
 12 during my opening statement. Back in the 1960s, half of
 13 the adult population in the United States were smokers.
 14 The average -- and California was higher than the
 15 national average in those days. Look at what has
 16 happened. Less than 25 percent of adult Americans smoke
 17 today, 17 percent in California; and in Orange County,
 18 where Mrs. Bullock lived, it's even lower.

19 This anti-smoking campaign has been so
 20 successful that the Surgeon General of the United
 21 States, 13 years ago in 1989, told the country that the
 22 ashtray is following the spittoon into oblivion.

23 Mr. Piuze is probably right. In the next
 24 century, people will look back and say, "What was that?"
 25 But it is today in 2002 a legal product. The sale of
 26 Benson & Hedges 100s today in 2002 remains a legal
 27 product in the United States, in California, in
 28 Los Angeles, and in Orange County.

1 And those are not the issues before you in
 2 this case, nor before you in this case is the claim that
 3 any other cigarette smoker might have anywhere else in
 4 the country, just Mrs. Bullock's.

5 Now I'm going to outline for you what we
 6 believe the evidence has shown on each of the claims
 7 that Mrs. Bullock has, those questions that you have to
 8 decide when you go into the jury room, and all of the
 9 facts that have been established in this case.

10 But I want to address for just a moment
 11 the question of why we called only one witness. Well,
 12 to some extent I have already answered it. We made a
 13 tactical decision, strategic decision, whatever you want
 14 to call it, that the focus on the case should be on what
 15 Mrs. Bullock knew, when she knew it, what she believed,
 16 what she didn't believe; and we made a decision not to
 17 call anyone else except on the subject of a safe
 18 cigarette.

19 That, remember, was the one exception back
 20 in my opening statement that I told you we wouldn't
 21 defend the company's conduct. I said there was one
 22 exception, and that one exception was the question of
 23 whether Philip Morris over the years has or has not made
 24 a good-faith effort to develop a safe cigarette
 25 regardless of what it said to the public about
 26 whether -- about smoking; and I am going to come to
 27 that, because it relates to a couple of the questions
 28 that you have to answer on the verdict form.

1 There was a time when we were planning to
 2 call at least another two or three witnesses. I
 3 mentioned one of them in my opening statement. Remember
 4 I told you in my opening statement that we were going to

5 bring a psychologist here to testify? And then as the
6 trial unfolded and Mrs. Bullock's preservation
7 deposition, as we call it, was taken down during the
8 trial over weekends, Mr. Leiter and I began to realize
9 that we didn't need -- that you don't need some
10 psychologist to come in here and tell you why
11 Mrs. Bullock smoked and whether she could have quit.

12 You have all the evidence that you need
13 from Mrs. Bullock herself, from her daughter, from her
14 doctors, from her medical records; and that's the reason
15 why we decided to call just one witness, Dr. Jerry
16 Whidby, who I will come to in a little while.

17 Okay. I know what Mr. Piuze said the
18 plaintiff's contentions are; but what I'm going to ask
19 you to do is to think for a moment about what it is that
20 Mrs. Bullock basically told you, told us and told you,
21 both in that discovery deposition that she gave a year
22 or so ago back in October -- not a year or so ago -- a
23 year ago back in October of 2001 and in the testimony
24 that she gave here during the trial.

25 What is it that she told you? And I think
26 it's -- I'm going to characterize it, and I think it's
27 important to characterize because it points up what I
28 think you will come to realize, if you don't already,

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1 are some very serious inconsistencies in the story she
2 tells.

3 She testified that she didn't know
4 anything. Four points I'm going to make here. The
5 first one: She didn't know anything about possible
6 health risks of smoking; nothing until the 1970s when
7 she began to realize that it was probably irritating her
8 bronchitis.

9 That's the first.

10 The second position is, well, maybe I
11 heard a little bit about lung cancer and other stuff in
12 there, but I didn't really know that cigarette smoking
13 could cause lung cancer until 2001 when she was
14 diagnosed with it. That's what she said.

15 Three, "Even if I sort of did know that
16 cigarette smoking can cause these other serious
17 diseases, Philip Morris confused me. They misled me."

18 And fourth, "Even if I wasn't misled and I
19 really sort of understood that cigarette smoking could
20 cause lung cancer, I tried to quit and I couldn't."

21 Those are sort of the four positions she
22 took in her testimony in this case; and I want to -- I
23 want to cover the evidence with you, sort of taking
24 those one at a time.

25 Let's start with that very first cigarette
26 back in 1956. No dispute about that. The very first
27 cigarette came in 1956.

28 Now all I got to do is find out where my

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1 exhibit list is. Well, I've lost it, so I will tell you
2 what she said. You probably remember:

3 "Q. Why did you smoke
4 that first cigarette?" "A.
5 Just curiosity."

6 But then she said that she sneaked that
7 first cigarette, and Mr. Leiter asked her back in the
8 discovery deposition:

9 "Q. You said you went

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1 lung cancer, not bronchitis.

2 But there was a dip in sales nationwide.
3 That's what Mr. Piuze tells you is the reason why all of
4 the cigarette companies got together and concluded that
5 they had a public relations problem. All of that is
6 true. It was widely publicized back in 1953 and 1954
7 that cigarette smoking could cause lung cancer and other
8 diseases.

9 Now, I can't prove to you that that's what
10 Mrs. Bullock meant when she said, "I feared my parents
11 might not appreciate it," but I think it's as good a
12 possibility as the answer which she gave which was, "The
13 expense, I imagine, and maybe they would be concerned
14 that I'd burn down the house."

I think it is at least as possible that
she had heard something about the serious dangers of
cigarettes even back in 1953 and 1954.

18 And you have heard testimony in this case
19 that cigarettes have been called "cancer sticks" and
20 "coffin nails" for a long, long time.

Then she went out to California after she graduated from high school and she decided to start smoking. Mr. Leiter asked her about that in the discovery deposition last October.

25 "Q. How long after you
26 arrived in Los Angeles did you
27 smoke that second cigarette?
28 "A. I think I bought a

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1 pack as soon as I got here
2 because I made up my mind I was a
3 big girl now. I was on my own
4 and I could do what I wanted to
5 do."

Well, of course, she was. What was there to make up her mind about? What was there to be a big girl about, the fact that she knew she was making a decision to do something that carried some degree of risk with it?

11 In 1960 -- this is the summer or fall of
12 1956.

13 In 1960 she's pregnant, and she stops or
14 cuts way back on her smoking; and you will remember she

15 testified that she cut back on her smoking not just
16 while she was pregnant but for some time thereafter.
17 Not health reasons she says, no, sir, not health
18 reasons. "I did it because I was sick."
19 Well, maybe.

20 Then plaintiff brought all the way down
21 here from Idaho Mrs. Bullock's first husband to
22 contradict her testimony that she wasn't smoking much
23 and to testify that health wasn't the reason he hated
24 smoking, but that isn't what he said. When he got on
25 the witness stand, that's not what he said. Remember?

26 "Q. At any time from
27 1957 to 1960, did you ever give
28 her any dislikes that had

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1 anything to do with health?"
2 I didn't ask that question. Mr. Piuze
3 did.

4 "A. I don't recall
5 focusing on health. I may have
6 said something to the effect that
7 it isn't good for you. It does
8 no benefit. 'It does you no
9 good.'"

10 Then in 1964 the Surgeon General of the
11 United States issued the Surgeon General's report. If
12 there are any of you who have never heard of it before
13 this case, you certainly have heard of it now, every day
14 of this trial, the Surgeon General's report.

15 It was all about lung cancer, not
16 bronchitis, not irritating your cough. It was about
17 lung cancer, and it was widely publicized all over the
18 United States. You heard Dr. Burns and Dr. Benowitz and
19 others concede that. There's no dispute. This was
20 widely publicized; and in fact, Mrs. Bullock heard about
21 the Surgeon General's report.

22 And back in October of 2001, Mr. Leiter
23 asked her.

24 "Q. When you heard that
25 the Surgeon General had issued a
26 report about the smoking, did it
27 concerned you because you were a
28 smoker?"

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1 "A. It may have
2 concerned me a little bit, but I
3 kept on smoking."

4 My point being a contention by
5 Mrs. Bullock -- the contention by Mrs. Bullock that she
6 never heard anything, didn't know anything about health
7 risks of smoking until that first doctor sometime in the
8 1970s told her, "It's irritating your bronchitis," just
9 doesn't wash. It just doesn't wash.

10 I forgot. There was something else that
11 Mrs. Bullock learned about during this period of time.
12 It could leave no question but that cigarette smoking
13 may be hazardous to your health. It began to appear on
14 every package of cigarettes she bought from 1966 to
15 1970.

16 I want to stop here for just a second
17 because there has been a lot of testimony from
18 Mrs. Bullock and from her daughter. "All I heard was
19 'may be.' They never talked about it is."

20 Well, that isn't so; because in 1970, the
21 warning on every pack of cigarettes in the United States
22 had that warning that said:

23 "The Surgeon General has
24 determined that cigarette smoking
25 is dangerous to your health."

26 So when Mrs. Bullock went to that first
27 doctor in the early 1970s, whenever it was, for her
28 bronchitis, when her daughter went with her because she

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1 wanted to make sure that Mrs. Bullock told the doctor
2 that she was a smoker, she knew smoking carried risks
3 and she had certainly heard, if she didn't know, that it
4 could cause lung cancer and other serious diseases.

5 Which brings me to the second question.
6 "Well, I may have known that a little bit, but I didn't
7 know that it could cause lung cancer until I was
8 diagnosed with lung cancer in 2001."

9 Well, to some extent I have already
10 answered that, because much of what Mrs. Bullock had to
11 be hearing before the early 1970s was about lung
12 cancer. The 1964 Surgeon General's report was not about
13 chronic bronchitis. The anti-smoking campaign that was
14 launched in the wake of the 1964 Surgeon General's
15 report was not about chronic bronchitis. It was about
16 lung cancer.

17 The American Cancer Society, which was the
18 most active organization in this campaign, wasn't
19 worrying about bronchitis. It was cancer.

20 But there is a boatload of circumstantial
21 evidence that Mrs. Bullock knew that cigarette smoking
22 could cause lung cancer in the 1970s, the 1980s, the
23 1990s.

24 I am about to start that. Do you want --

25 THE COURT: I'm sorry?

26 MR. BLEAKLEY: I am about to start that. Do you
27 want to take the break now?

28 THE COURT: It's close enough.

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1 MR. BLEAKLEY: It's up to you. I will keep
2 going if you want me to.

3 THE COURT: We are going to break at noon, in
4 any event; and if it's a convenient place to do so, this
5 will be just fine.

6 Ladies and gentlemen, you are admonished
7 not to discuss this case amongst yourselves or with
8 anyone else. Do not form or express any opinion on the
9 matter until it is finally submitted to you.

10 Please try to be back at 1:30. The time
11 is important because we are going to have the time that
12 we have to finish, and the sooner you are here and the
13 sooner they finish, the sooner you can go home; but we
14 will stay here until this case has ended. So do the
15 best you can.

16 Don't discuss this amongst yourselves or
17 with anyone else. Do not form or express any opinion on
18 the matter until it's finally submitted to you.

19 (The noon recess was taken until
20 1:30 p.m. of the same day.)
21
22
23
24

1 Los Angeles, California September 20, 2002
2 Case Number: BC249171
3 Case Name: Bullock vs. Philip Morris
4 Department 19 Hon. Warren L. Ettinger, Judge
5 Reporter: Ruanne McArthur, CRR, CSR #2699
6 Time: 1:30 p.m. Session
7 Appearances: (As heretofore noted.)
8 -oOo-

9 (The following proceedings were held
10 in open court within the presence of
11 the jury:)

12
13 THE COURT: Okay. The order will reflect that
14 the jurors are present and in the box.

15 Counsel, you may resume your final
16 argument.

17 MR. BLEAKLEY: Thank you, your Honor.
18 Good afternoon, everyone.
19 (All respond.)

20 MR. BLEAKLEY: Before we broke for lunch, I was
21 talking with you about Mrs. Bullock's testimony that she
22 didn't know smoking could cause lung cancer until 2001;
23 and I had reviewed not only the information that she had
24 before about the 1970s, but I was about to start talking
25 with you about the circumstantial evidence after 1970 or
26 so that Mrs. Bullock knew that cigarette smoking could
27 cause lung cancer and other serious diseases.

28 Do you recognize this? It's not the same

1 one that Mr. Piuze used because I didn't feel like
2 dealing with trying to put it up and taking it down. So
3 what we did was we reduced it in size, which I know is
4 going to make it harder for you to read.

5 But I want to use this time line, which I
6 will hold up closer to you when you actually need to
7 read anything. There's a little bit of a difference
8 between this one and the one that Mr. Piuze was
9 reading. This doesn't have the ads stuck to it that
10 Mr. Piuze put on this during the testimony of
11 Dr. Goldberg and others, and he's got some other things
12 here from the testimony of Geoffrey Bible in 1998; but
13 otherwise, it's the same exhibit and I want to use it
14 pretty much to show the same sort of thing, which is to
15 demonstrate what it is that Mrs. Bullock did see and
16 what she didn't see and what Mrs. Bullock's smoking
17 history was.

18 Because I think, as we go through this,
19 you will see that on both sides of the line, the facts
20 are very different from what has been portrayed by
21 Mr. Piuze.

22 I was starting to talk with you about the
23 circumstantial evidence that Mrs. Bullock knew that
24 cigarette smoking was -- could cause lung cancer and
25 there were a number of sources; obviously, the fact that
26 there was a public health campaign going on throughout
27 the United States, the fact that there was a warning on
28 the pack; but in addition, it is in the early 1970s when

1 her daughter begins to urge her to quit smoking, when
2 she makes her first visit, or at least the first we
3 know, to a doctor who tells her to quit smoking.

4 And let's start with the daughter.

5 Remember when she testified here, she said
6 that she learned in junior high school that smoking
7 wasn't good for you. She talked about an experiment
8 that had been shown to her when she was in junior high
9 school in which they drew cigarette smoke through some
10 cotton and left a deposit, this yucky stuff, on the
11 cotton and she came home and told her mother about it.

12 She was worried about that stuff going
13 into her mother's body. She was worried about it going
14 into her lungs, although she says she was not sure that
15 she was worried about the lungs, but she certainly
16 admitted that she told her mother that she didn't think
17 that stuff going into your body was good for you and
18 that it wasn't healthy.

19 So we have now a new source in the 1970s,
20 her daughter who is learning in school that smoking
21 isn't good for you; and I would suggest to you that it
22 is not believable that her daughter wasn't being told in
23 school in the 1970s that the reason why it wasn't good
24 for you is because it could cause serious lung diseases
25 like lung cancer since that's what all of the publicity
26 and all of the public health information that was going
27 around the United States was about; although both
28 Mrs. Bullock's daughter and she say that isn't what

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1 happened.

2 Now, we do know -- and there is no
3 denying, no denial, no dispute -- that Mrs. Goldstein,
4 Ms. Goldstein, Ms. Bullock's daughter hated smoking with
5 a passion, despised it, and that she nagged her mother
6 constantly from whenever it was in the beginning of the
7 1970s right up until the end, constantly nagged her
8 mother to stop smoking.

9 Not only that, she engaged in all kinds of
10 schemes to get her mother to stop smoking. Remember she
11 said she told her mother it causes wrinkles? Remember
12 that testimony? She took her mother on vacations, ski
13 vacations and trips to Europe, but only if she wouldn't
14 smoke while she was on the trip.

15 This is someone who was absolutely devoted
16 to getting her mother to stop smoking.

17 And yet she said and her mother said never
18 a word about things like lung cancer or emphysema, only
19 irritating the bronchitis. I suggest to you that that's
20 a little hard to believe.

21 It is understandable, ladies and
22 gentlemen, that Mrs. Bullock's daughter, who loves her,
23 would try to support her case here; but some of what she
24 told you just doesn't ring true and that's one of the
25 things, that she never used all of the weapons that were
26 available to her.

27 She testified here that she only -- the
28 only warning that she ever heard about was the 1966

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1 warning, the one that says "Smoking may be hazardous."
2 Well, that warning had already been supplanted by the
3 "Is hazardous" warning by the time she was 10 years
4 old.

5 I suggest to you it's a little hard to

6 swallow that she never saw and never said and never
7 stuck up in front of her mother's face, "Mom, the
8 Surgeon General says cigarette smoking is hazardous, not
9 may be hazardous."

10 She said she never saw the warning on a
11 pack of cigarettes that her mother had all through those
12 years. She testified that she never heard of this
13 warning that went on the pack in 1985 and was on the
14 pack from 1985 to date, a rotating warning.

15 Here is the back of Benson & Hedges 100s,
16 the cigarettes that Mrs. Bullock was smoking all through
17 these years; and for the last 17 years, this warning has
18 said one of those four things. This particular one
19 says, "Smoking causes lung cancer, heart disease,
20 emphysema" -- remember her stepdad? -- "emphysema and
21 may complicate pregnancy."

22 It is inconceivable, I suggest, that she
23 didn't ever see this warning, that she never took this
24 warning and stuck it up in front of her mother's face
25 and said, "Mom, it causes lung cancer" instead of "It
26 causes wrinkles."

27 The emphysema story with her stepdad.
28 Remember I asked her whether she hadn't testified in her

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1 deposition that when she got home from college, she
2 found that her stepdad was having difficulty breathing,
3 was having to use inhalers, and that she had learned
4 about emphysema in college, that she knew it was caused
5 by smoking, and that she thought her dad had been
6 smoking.

7 And she told us that when she came home
8 from college, she didn't mean 1983 when she came home
9 from college, she meant ten years later.

10 I suggest to you that that's not
11 believable either and that it is almost a certainty that
12 Mrs. Bullock's daughter used all the weapons she could
13 to try to dissuade her mother from continuing to smoke.

14 The doctors. Mrs. Bullock and
15 Ms. Goldstein say that all of the doctors that she went
16 to through the 1970s, 1980s, 1990s, cannot remember a
17 one of them ever mentioning that cigarette smoking
18 causes lung cancer or emphysema.

19 That first doctor that Mrs. Bullock and
20 her daughter went to together because her daughter
21 wanted to make sure she told the doctor she was a smoker
22 when she was suffering from chronic bronchitis, he was a
23 lung specialist. Every physician who has testified in
24 this case told you that it had been their practice since
25 they graduated from medical school to tell their
patients, "Don't smoke. It causes serious diseases."

27 And yet Mrs. Bullock and her daughter
28 would have you believe that she went to doctor after

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1 doctor after doctor, that all those visits to emergency
2 rooms in the 1980s and 1990s, not a one of them ever
3 said, "Cigarette smoking causes lung cancer, emphysema,
4 and other serious diseases."

5 Even chronic bronchitis -- Dr. Benowitz
6 told you. You heard him in this courtroom say, "Even
7 chronic bronchitis can be fatal." It's just not
8 believable that not one single doctor in 20-odd years
9 ever said to Mrs. Bullock, "You got to stop smoking.
10 It's aggravating, causing, irritating your chronic

11 bronchitis you are having over and over again. The next
12 step after chronic bronchitis is emphysema, which can be
13 fatal; and guess what, it also causes lung cancer."

14 It's just not believable.

15 Okay. The third line of testimony that
16 Mrs. Bullock has given you in this case -- and this is
17 sort of the crux of what Mr. Piuze has acknowledged is
18 the principal claim in the case, fraud; and that is,
19 "Well, maybe I heard a little bit about lung cancer here
20 and there, but Philip Morris confused me with all that
21 talk about controversy and it's just statistics."

22 Well, the evidence doesn't support that, I
23 submit to you. When you sit down and think about it,
24 when you are talking about it with each other next week
25 in your deliberations and you review all of the evidence
26 that you have heard -- and this is where I want to talk
27 about this time line -- it just doesn't fly.

28 Let's go back to the 1950s. We know that

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1 in the 1950s, from Mrs. Bullock's own testimony, that
2 there was nothing from Philip Morris that caused her to
3 believe that cigarette smoking wasn't dangerous. In the
4 October 2000 deposition, Mr. Leiter asked her -- and you
5 remember the testimony. You remember Mr. Leiter going
6 through every decade, decade by decade, "What did you
7 hear?" And when he didn't get a complete answer, he
8 would go back and ask again, "Tell us what you can
9 remember hearing."

10 In the 1950s, "I don't remember hearing
11 anything."

12 Then the 1960s, "I think they may have
13 came out with something about it may be unhealthy or
14 dangerous or something like that."

15 So we don't have when Mrs. Bullock took up
16 smoking, when Mrs. Bullock smoked that first cigarette
17 in 1956, and the cigarettes that she smoked after she
18 came out to California, even she doesn't contend that
19 Philip Morris was saying anything that confused her
20 about controversy or it's just statistics.

21 Now I want to stop here for a moment
22 because I have to deal with the advertising issue.
23 Remember the parade of ads? Mr. Piuze had Mrs. Bullock
24 hold up this parade of ad after ad after ad from 50
25 years ago. She not only remembered these ads from 50
years ago, she remembered ads from 50 years ago for
brands she didn't even smoke, like the Philip Morris
brand. She remembered what it was about, the ads that

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1 attracted her, so she told you.

2 And then they brought Professor Goldberg
3 here from Penn State University to tell you that's what
4 made her smoke. Even if she doesn't know it, that's
5 what made her smoke was these ads.

6 Now I am tempted -- we have been tempted
7 basically to ignore this testimony because -- I'll tell
8 you why in a few moments, but I am not going to ignore
9 it. I'm going to say just a little about it; and that
10 is, I think that Mrs. Bullock and Dr. Goldberg and
11 Mr. Piuze have at least exaggerated the effect that ads
12 had on her decisions.

13 I'm not going to stand here and tell you
14 that advertising didn't have any impact on her at all.
15 I'm not going to sit here and tell you that advertising

16 for cigarettes plays no role whatsoever in anybody's
17 decision to smoke, but I think it's pretty clear that
18 the role of advertising in this case with Mrs. Bullock
19 has been exaggerated.

20 Think about it. What are the things that
21 Mrs. Bullock told you when she held up these ads and was
22 asked about them that appealed to her? "The flip-top
23 box appealed to me."

24 Well, did that play any role in the
25 decision she made? She couldn't remember whether she
26 actually ever smoked a flip-top box or not.

27 Remember her talking about the man
28 lighting her cigarette. "I was attracted to this ad

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1 because the man lit the cigarette." So what did she
2 turn around and do? Married a man who hated smoking
3 and, I would wager, never lit one of her cigarettes
4 once.

5 She was attracted to one, the Marlboro ad
6 with the cowboys and the horses, because her grandfather
7 had been on a ranch; and did she choose the live on a
8 ranch or be a horsewoman? No. She came to Southern
9 California.

10 My point is that the role of these ads, I
11 think, has been exaggerated. The role of these ads in
12 Professor Goldberg's testimony -- did she ever change
13 her hair? She said she adored Liz Taylor. Did she
14 change her hair to look like Liz Taylor's? There's no
15 evidence that these ads which attracted her actually
16 played any role in the decisions she made, other than
17 the fact that she did at some time become a smoker.

18 But my main point is not that I think the
19 affect of advertising on her smoking decisions was
20 exaggerated. It is that there was nothing wrong with
21 any of these ads. There was nothing illegal about
22 them. There was not an ad put up here in front you that
23 said, "Philip Morris says cigarettes don't cause lung
24 cancer." There was not an ad that was put up here that
25 Mrs. Bullock saw that said, "There's a controversy."
There wasn't an ad that said, "It's just statistics."

26 These were ads that had appealing,
27 glamorous people; and that wasn't illegal or wrong in

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1 1956 and it isn't illegal or wrong today.

2 Incidentally, the \$10 billion figure that
3 Mr. Piuze threw around here today, "Philip Morris spends
4 \$10 billion a year." Huh-uh. Philip Morris doesn't
5 spend \$10 billion a year, and there's no evidence in the
6 case that it does.

7 The industry, the entire industry, may
8 spend \$10 billion a year on all promotional activities,
9 which includes in-store promotions, not just
10 advertising.

11 There is no evidence that the decision --
12 sort of a key decision, when you think about it -- that
13 Mrs. Bullock made, which was to take up smoking of
14 Benson & Hedges 100s in 1966, there's no evidence
15 whatsoever that that decision was motivated by Benson &
16 Hedges advertising. She said she took up the smoking of
17 Benson & Hedges because she liked the taste of them
18 better than any other, because her husband smoked them,
19 and because it was convenient.

20 So much for advertising.

21 All right. Putting aside the 1950s and
22 putting aside advertising, what is it that Philip Morris
23 said that confused her? Well, I'll tell you what it
24 isn't; and that is, it isn't anything that you have seen
25 in evidence in this case. Not one piece of evidence
26 that you have seen in this case is something
27 Mrs. Bullock saw and on the basis of which she relied
28 instead of what she was hearing from her daughter, from

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1 her doctors, from the Surgeon General, from the public
2 health community.

3 And that's why I had this smaller time
4 line made up, because on this time line are a number of
5 the things about which Mr. Piuze has discussed with you
6 in closing and during the course of the case.

7 And I apologize that it's hard to see, but
8 I'll put it up here closer.

9 The Frank Statement in 1956. No evidence
10 whatsoever that Mrs. Bullock ever saw the Frank
11 Statement, which was in newspapers on one day in 1954
12 before she ever had her first cigarette. None.

13 I can't read that upside down. I'm not
14 very good at it.

15 (Laughter.)

16 MR. BLEAKLEY: Philip Morris' response to the
17 Surgeon General's report. She saw the Surgeon General's
18 report. No testimony of any kind that she saw Philip
19 Morris' response to the 1964 Surgeon General's report.

20 The taped interview of Joseph Cullman on
21 FACE THE NATION, no evidence that Mrs. Bullock ever saw
22 it.

23 The Roper proposal of The Tobacco
24 Institute, no evidence Mrs. Bullock ever saw let alone
25 relied upon it.

26 The cigarette controversy, the documents
27 submitted to Congress to try to get them not to pass
28 that 1985 warning we just talked about, no evidence that

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1 Mrs. Bullock ever saw that.

2 No evidence that Mrs. Bullock ever saw or
3 relied upon Geoffrey Bible's testimony in 1998.

4 She did say she was at least aware of the
5 website; which, by the way, the first website wasn't in
6 2000, it was a year or so before that. The language was
7 changed, but the acknowledgement that the overwhelming
8 medical consensus that smoking causes cancer and is
9 addictive came earlier, not a lot earlier, not as early
10 as it should have, but earlier than this.

11 So everything that's on this time line, no
12 evidence in this case that Mrs. Bullock ever saw any of
13 them.

14 But it isn't just that, ladies and
15 gentlemen, every document that you saw put into evidence
16 in this case is something Mrs. Bullock didn't see.
17 Those Tobacco Institute press releases, those weren't
18 press stories. Those were press releases. The only way
19 Mrs. Bullock would have seen them is if they were
20 carried in a newspaper. She never saw them.

21 The internal memoranda from the Council
22 for Tobacco Research, from Philip Morris, from The
23 Tobacco Institute, no evidence in this case that
24 Mrs. Bullock ever saw a one of them.

25 And it's interesting, if you stop and

26 think about it. Mr. Piuze never put any of these in
27 front of Mrs. Bullock and said, "Is this one of the
28 things that you relied upon?" Because her answer would

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1 have been, "No, I never saw it."

2 So where are the press stories that she
3 saw? Where are the interviews, if there were any, of
4 people on television that she relied on? Where is the
5 stuff about it's a controversy and it's just statistics
6 that she actually saw and relied upon?

7 Why -- if there were such stories, they
8 wouldn't have been hard to find. Couldn't they have
9 found an article from the Los Angeles Times and put it
10 before Mrs. Bullock and have her say, "Yeah, that's one
11 of the ones I remembered"? She remembered ads from 50
12 years ago, but she didn't.

13 I'm suggesting to you, I guess, that it's
14 a little convenient for Mrs. Bullock to say, "It's
15 controversy and it's just statistics. I kept hearing it
16 over and over again."

17 Now, with that I want to stop for a moment
18 and talk a little bit about chemo-brain. You heard a
19 lot about chemo-brain in this case, not too much about
20 it this morning, although Mr. Piuze threw it into his
21 argument; but certainly the suggestion has been made
22 that things -- Mrs. Bullock's memory doesn't work as
23 well as it did and the things that don't help her case
24 very much are probably the product of this chemo-brain.

25 Well, the first thing is, the only
26 evidence there is about anything such as chemo-brain is
27 what Dr. Vandermolen said, and he didn't tell you that
28 chemo-brain produces incorrect recollections of facts.

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1 He didn't tell you that the scientific evidence
2 supported a notion that the things Mrs. Bullock said in
3 her deposition should be disregarded. He didn't give
4 any such testimony.

5 And that's essentially what we're talking
6 about here, because the plaintiff and Mr. Piuze and
7 Mrs. Bullock are perfectly prepared to endorse the
8 things that she says and remembers from years and years
9 ago that help her case. The only things that they
10 suggest ought to be ignored because maybe it's
11 chemo-brain are the things that don't help her case.

12 For example, that she wasn't really much
13 of a smoker until the mid-1960s or testimony that she
14 was only playing around with smoking. In the
15 October 2001 deposition, Mr. Leiter asked her, "Did you
16 consider there to have been a time when you were just
17 playing around with smoking?"

18 "Yes. When I first started."

19 "Until when?"

20 "I'd say I considered myself a real
21 smoker, mid-20s, approximately."

22 Now, how did this testimony come about?
23 This testimony came about because Mr. Leiter had asked
24 her about those medical records from 2001 in which she
25 had told the doctors, after she was diagnosed with lung
26 cancer, that she started smoking at the age of 28, and
27 this was her explanation. This was her explanation.

28 So they called Mrs. Johnson all the way

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1 down here, the friend -- the person who used to be

2 married to her brother -- to come down here and
3 contradict Mrs. Bullock's testimony about how much of a
4 smoker she was. Remember that? She was here for about
5 ten minutes.

6 The problem is she didn't contradict
7 Mrs. Bullock's testimony, because when Mr. Piuze asked
8 her how often she saw Mrs. Bullock smoke, she said every
9 two or three hours, which by my calculations, even if
10 you only sleep seven hours a day, is six or eight
11 cigarettes a day.

12 Now, none of this is critical, whether she
13 was smoking two cigarettes or seven cigarettes a day.
14 The point -- my point is that between 1956 and 1966 or
15 so, she wasn't smoking a whole lot; and my other point
16 is that chemo-brain doesn't explain remembering bad
17 things and not remembering good things.

18 I hate to say this, but sometimes age has
19 something to do with not remembering things. For those
20 of us in our 60s, that is, my daughter likes to call
21 them "senior moments." I am sure you have heard that
22 term before.

23 In any event, chemo-brain doesn't really
24 explain it.

25 You know, I would suggest to you that you
26 got to take Mrs. Bullock's testimony and you got to
27 accept it all or reject it all; and if you reject it
28 all, then there's no case at all.

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1 And I would suggest to you that if you
2 accept it all on balance, it establishes that
3 Mrs. Bullock knew that smoking was risky, that she knew
4 that it could cause lung cancer, and that nothing that
5 Philip Morris ever said played any significant role in
6 the decisions she made about smoking; because all the
7 way through the 1960s and 1970s and 1980s, her view
8 about smoking is that she was an adult and it was her
9 business.

10 I also have to have notes. I can't do
11 this without notes. I used to be able to, but not
12 anymore.

13 She didn't listen to her daughter. She
14 didn't listen to her doctors. She didn't listen to the
15 Surgeon General. She didn't listen to the public health
16 community. What reason do we have to believe that she
17 knew -- even Philip Morris acknowledged that there
18 was -- it was a risk factor and that it may be
19 hazardous -- what reason do we have to believe that it
20 would have made a difference to Mrs. Bullock if Philip
21 Morris had made the same kind of acknowledgement that it
22 did a couple of years ago?

23 Fourth. "Even if I understood that
24 smoking could cause lung cancer and I wasn't really all
25 that confused, I tried to quit. I tried hard to quit,"
26 she says.

27 Now, you might ask why did she try so hard
28 to quit if she wasn't concerned about her health? But

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1 the point is her testimony is that she tried hard to
2 quit.

3 Well, did she? That's the question. Did
4 she really try hard to quit? There's no question that
5 she started trying hard to quit in the late 1990s; and
6 as I'm going to tell you in a moment, she did; but did

7 she try hard to quit in the 1970s and 1980s?
8 A couple of preliminary points I want to
9 make before I put the time line back up.

10 First is, there is no evidence in this
11 case and no real contention in this case that anything
12 that Philip Morris said at any time or didn't say about
13 addiction played a role in her smoking decisions. In
14 other words, there's no evidence -- and as far as I
15 know, no claim that she was -- she kept on smoking
16 because she thought it wasn't addictive.

17 To the contrary, in the October 2001
18 deposition, Mr. Leiter asked her, "When did you first
19 believe you were addicted to cigarettes?

20 "Even though I wasn't smoking as much, the
21 late Fifties. By the late Fifties. By the Sixties, I
22 felt I knew I was addicted."

23 So this is somebody who thought they were
24 addicted very early on, and there was no misleading, no
25 misguiding, no confusion on the part of Mrs. Bullock
26 about that issue.

27 The second point I want to make is that
28 all of you, I'm sure, have heard from time to time, the

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1 accusation that Philip Morris spikes its cigarettes with
2 nicotine to make them more addictive; and not only is
3 there no evidence in this case that Philip Morris adds
4 nicotine to cigarettes to make them more addictive,
5 Dr. Farone, called here by the plaintiff, admitted that
6 it wasn't true and that he personally had defended the
7 company himself against charges that nicotine is added
8 to cigarettes.

9 Now, he did tell you the little story
10 about urea that Mr. Piuze referred to here this
11 afternoon. Mr. Piuze called it "animal urine." Urea is
12 not animal urine, and Dr. Farone and Mr. Piuze know it
13 isn't animal urine. Urea is a chemical that is used in
14 all kinds of food products in this country. It is not
15 animal urine; and there is no evidence whatsoever --
16 Dr. Farone didn't offer any evidence whatsoever that
17 adding urea to cigarettes, which is done for taste,
18 has -- makes cigarette smoking more addictive. Not one
19 shred of evidence that adding urea to cigarettes makes
20 them more addictive.

21 Okay. Let's get back to when she tried to
22 quit.

23 We know she did, in fact, almost quit in
24 1960 when she was pregnant and for some time
25 thereafter. That's when she was smoking lights. There
26 is no doubt about that. That's not even in dispute.

27 But then, according to the time line and
28 Mrs. Bullock's testimony, there was the hypnosis.

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1 Remember the hypnosis? She couldn't remember when it
2 was, who it was, where it was, how many times she went,
3 what it consisted of; and if she quit at all, it was
4 only for two or three days.

5 Plastic filters. Remember what she said
6 about plastic filters? It wasn't a quit attempt. It
7 wasn't a quit attempt. "I did it because I was trying
8 to avoid staining my teeth." That's her testimony. Let
9 me show you.

10 This is from her trial testimony.
11 Mr. Leiter was cross-examining her.

12 "Last week when Mr. Piuze was questioning
13 you, you said that you were not using those filters to
14 try to stop smoking, right?
15 I had said in a previous deposition I
16 tried some filters a kid was selling at work and he was
17 talking about the tar. He wasn't talking about
18 health." And then she goes on to explain why she tried
19 the plastic filters.

20 I am going to take the liberty of
21 scratching out plastic filters from this time line.
22 Cold turkey. Do you see that up here?

23 Cold turkey. Mr. Leiter her asked her about cold
24 turkey. Actually, the question he asked her is, "What
25 different methods have you used to try to stop smoking?

26 He didn't even ask her, "Did you, in fact,
27 try cold turkey?" Mrs. Bullock volunteered this. Again
28 she testified about the filters being purchased for the

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1 purpose of avoiding staining her teeth; but then she
2 admitted that she had misspoken when she said "cold
3 turkey."

4 "Like if I was skiing with my daughter on
5 vacation, I would try to quit for the day when I was
6 around her; but then when I was on my own, I would do
7 whatever I wanted to do," and what she wanted to do was
8 smoke.

9 Later in her trial deposition, once again
10 the question asked was, "We are talking about the
11 1980s?" And once again she said she hadn't really tried
12 cold turkey. "I think I misspoke."

13 And this is interesting too, because this
14 is the first time we hear about the patches and the
15 gum. We've got gum down here in 1988, but, in fact, we
16 know from the evidence in this case that the gum came on
17 the market a few years before that; and here she's
18 saying that even with the gum, she wasn't using it to
19 quit but only to control the amount of smoking she was
20 doing around her daughter.

21 "And then at night when I would get into
22 my own space, then I would smoke."

23 What I'm saying, ladies and gentlemen, is
24 the evidence that you've heard from Mrs. Bullock about
25 these quit efforts in the 1970s and 1980s aren't really
quit efforts. Quitting means quitting. It doesn't mean
trying to smoke a little less. It doesn't mean not
smoking around your daughter. It doesn't mean agreeing

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1 to go on vacation and not smoking during the day when
2 you were with her and then smoking at night.

3 Now let's talk for just a second about
4 this issue of whether anybody can quit, who can quit,
5 who can't quit.

6 This morning Mr. Piuze suggested to you
7 that 95 percent of people can't quit. I don't know
8 where he came up with that number. That is not what
9 Dr. Benowitz said. That is not what Dr. Cummings said.
10 What they said is that only 5 percent or so succeed the
11 first time. If it were true that 95 percent of the
12 people can't quit, how would you explain that half of
13 all the living smokers there have ever been have quit?
14 Both Dr. Benowitz and Dr. Cummings said anybody can quit
15 if they really tried.

16 For some people it's easy. Mr. Piuze is

17 absolutely right about that. There are people -- you
18 probably know some -- who say one day -- they have been
19 smoking two packs a day for 20 years and they say, "I'm
20 not going to smoke anymore," and the next time you see
21 them, they are not.

22 And then there are others for whom it is
23 more difficult. No question about it; and it certainly
24 appears from the record in this case that Mrs. Bullock
25 was one of those.

26 But quitting takes motivation. Remember
27 Dr. Benowitz and Dr. Cummings? It takes motivation, it
28 takes determination, and it takes a plan.

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1 Let's look at some of the things that
2 Drs. Benowitz and Cummings said:

3 I tell them that it may be
4 difficult and they may have to
5 try several times but that
6 eventually you can quit. Anyone
7 is capable of quitting."

8 "Dr. Cummings, you have
9 previously testified, have you
10 not, that your success rate at
11 your smoking cessation clinic is
12 100 percent if the smoker really
13 wants to quit and really wants to
14 stick with it and that people
15 can quit smoking if they make up
16 their minds."

17 But you have to want to and you have to
18 try. You got to throw away your cigarettes. You got to
19 throw away your ashtrays, your matches, your lighters,
20 the paraphernalia that is associated with smoking.

21 Do you remember Mrs. Bullock up on this
22 screen, "Did you ever throw away your cigarettes?"

23 She thought for a second, looked up at the
24 ceiling and said, "No, I never threw away my
25 cigarettes. Never."

26 Dr. Cummings: "In order to quit and quit
27 for good, it requires a sincere desire. It takes a
28 willingness to make changes in your life, in your daily

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1 routine."

2 Dr. Cummings' mom was able to quit without
3 throwing away her cigarettes, but some people can't.

4 Dr. Cummings said you need determination.
5 You need a willingness to make changes in your lifestyle
6 and be prepared to put up with some temporary discomfort
7 to quit.

8 Ladies and gentlemen, the undisputed
9 evidence in this case is that 50 million Americans have
10 quit smoking for good. The overwhelming majority of
11 them with no professional help, no shrinks, no cessation
12 clinics, no nicotine substitutes, no Zyban. Half of all
13 the living smokers who ever smoked have stopped
14 smoking.

15 The rate of smoking in the United States
16 and in California has declined steadily over the last 45
17 years and is still going down today. People can quit.
18 Mrs. Bullock could have quit. She didn't really try
19 until the late 1990s; and when she did really try, she
20 did quit.

21 First, let's remember Dr. Rodas. The

22 evidence that you have seen suggests that it was when
23 she was going to see Dr. Rodas that she really began to
24 take seriously trying to stop smoking. This is when she
25 said that she was embarrassed by the fact that she
26 continued to smoke.

27 And Dr. Rodas stood here in this chair and
28 told you that she had a considerable amount of success.

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1 He was the one who prescribed Zyban. She was able
2 dramatically to cut down on the amount of smoking that
3 she did and she was able to stop for two or three
4 months.

5 But the key is that she did stop smoking
6 and stopped smoking for several months in late 2000.

7 Remember Dr. Vandermolen? I showed
8 Dr. Vandermolen her records, and he remembered that
9 before her diagnosis with cancer, Mrs. Bullock had
10 stopped smoking for at least two months before she
11 learned she had cancer and she went on refraining from
12 smoking for several months after that.

13 In other words, for almost a year, around
14 a year, eight or nine months, something like that,
15 beginning before she learned she had cancer,
16 Mrs. Bullock did quit. She not only could quit, she
17 did; and this is in 2000 when she was at her most
18 addicted, heaviest smoking.

19 Think what would have happened if she had
20 stopped smoking for good in 1960 when she was pregnant
21 with her daughter or in 1964 when this Surgeon General's
22 report came out or in 1966 instead of taking up the
23 smoking of Benson & Hedges 100s with her husband or if
24 she had stopped in the 1970s when her daughter and her
25 doctors were urging her to quit.

26 There is no disputing the evidence in this
27 case, that if she had stopped smoking at any of those
28 points in time, she wouldn't have lung cancer today; and

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1 she could have quit any time during that period if she
2 had tried as hard as she did when she eventually did
3 quit.

4 So where does that leave us? Where that
5 leaves us is with the evidence as to a number of the
6 questions that you are going to be called upon to answer
7 in this verdict form, I would suggest all you need to
8 know, to answer no.

9 Question No. 2: Was plaintiff's injury
10 caused by a failure of defendant adequately to warn her
11 about the dangers of smoking before July 1969?

12 The answer, I submit to you, should be
13 "No."

14 She knew about the dangers of smoking
15 before July of 1969. She didn't need to be warned any
16 more than she was already being warned.

17 Question No. 4: Was plaintiff's injury
18 caused by a negligent failure adequately to warn about
19 the dangers of smoking before July 1, 1969?

20 The same answer. She already knew about
21 the dangers of smoking before July 1, 1969.

22 By the way, what do you think happened
23 after July 1969? After July 1969 is when the warning
24 that says cigarette smoking is dangerous to your health
25 went on the pack. That's why you don't even have to
26 think about this question after July of 1969.

27 Question No. 5: Was plaintiff's injury
28 caused by her relying upon a misrepresentation

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1 intentionally made to her by defendant?

2 The answer, I suggest, on the basis of the
3 evidence, is "No."

4 6: Was plaintiff's injury caused by an
5 intentional concealment of information from her by
6 defendant before July 1, 1969?

7 Answer: "No."

8 Was plaintiff's injury caused by her
9 relying on a misrepresentation negligently made?

10 "No."

11 Was plaintiff's injury caused by her
12 relying on a false promise as to a material matter made
13 by defendant?

14 Answer: "No."

15 The defendant made no promise to her and
16 she didn't rely on one.

17 So as to six of the eight questions on
18 this verdict form, I submit to you that the evidence
19 that you have seen and heard establishes that
20 Mrs. Bullock knew that smoking was dangerous at least as
21 early as 1964 and possibly, if not probably, before
22 then.

23 She knew that it was actually damaging her
24 health from the early 1970s when her doctors started
25 telling her, "It's irritating or aggravating your
26 bronchitis and I suggest you watch out for lung cancer."

27 For 30 years she knew it was dangerous,
28 she made a decision not to quit.

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1 You know which one I'm looking for.

2 MR. LEITER: Over here.

3 MR. BLEAKLEY: Because she was an adult and this
4 was her business. She didn't try to quit in the 1970s,
5 she didn't try to quit in the 1980s, and she really
6 didn't try to quit until the late 1990s when she did
7 successfully quit.

8 Okay. That leaves us with two questions
9 on the verdict form that we haven't talked about. One
10 is question no. 1: Was plaintiff's injury caused by a
11 defect in the design of defendant's cigarettes? And
12 question no. 3 -- don't worry about why they are in this
13 order. That's our fault. I am not sure what the right
14 order would be.

15 But in any event, question 3: Was
16 plaintiff's injury caused by a negligent design of
17 defendant's cigarettes?

18 It's interesting, I think, that in the two
19 hours that Mr. Piuze had here this morning, these claims
20 were never mentioned, never mentioned.

21 But let's talk about what they are and
22 what evidence there is and what evidence there is not.

23 First, there's only one person who came
24 into this courtroom and said anything to you about a
25 negligent design of cigarettes; only one.

26 Dr. David Burns, Dr. Richard Doll,
27 Dr. Neal Benowitz, Dr. Cummings, none of those witnesses
28 came into this courtroom and said, "Oh, yes. And

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1 besides, Philip Morris, had it wanted to, could have
2 made a safer cigarette or a better design."

3 Only one person came in here and told you
4 that and that was Dr. Farone; and I suggest to you, at
5 the very least, you should take into account the fact
6 that Dr. Farone had an axe to grind.

7 But let's look at the evidence. Let's
8 look at what the evidence is, even under the best
9 scenario the plaintiff could paint.

10 First there is no dispute, certainly not
11 from Dr. Farone, that beginning very early on, Philip
12 Morris was in fact trying to make a safer cigarette.
13 That's why he went there. That's what he was personally
14 involved in. He acknowledged that efforts to make a
15 safe cigarette had been going on at Philip Morris for
16 years before he got there.

17 The fact of the matter is, one of the
18 documents that the plaintiff likes to refer to, although
19 Mr. Piuze did not refer to it this morning, is
20 Exhibit 35, Plaintiff's Exhibit 35, "Tobacco and Health,
21 R&D Approach" 1961.

22 When plaintiff -- when Mr. Piuze showed
23 you this, it was to tell you that Philip Morris knew way
24 back in the 1960s that there were compounds in the early
25 1960s in cigarette smoke that had been identified as
26 carcinogens; and Dr. Wakeham was aware that there was,
27 in the published literature, not some secret held by
28 Philip Morris, in the public literature, evidence that

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1 cigarette smoke contains a number of carcinogenic
2 substances.

3 Now, why was he putting this in this
4 report back in 1961? Because he was recommending to
5 Philip Morris management that it undertake a program to
6 develop a medically accepted cigarette. In other words,
7 whatever they were saying about whether it had been
8 proven scientifically or not, in its R&D, Philip Morris
9 was operating on the assumption that it was necessary
10 for them to try to develop what Dr. Wakeham called a
11 "medically acceptable cigarette."

12 And he set out a program leading to a
13 medically acceptable cigarette. Interesting that his
14 cost guesstimate for these things was \$14 million; and
15 as you know from the testimony of both Dr. Whidby and
16 Dr. Farone, a whole lot more than that was spent.

17 But what are the things that Dr. Wakeham
18 was talking about back in 1961? Reduction of irritating
19 factors in smoke.

20 Remember this exhibit? That's selective
21 reduction.

22 Number two: Controlled nicotine in filler
23 and smoke.

24 That's denicotinized tobacco.

25 Reduction of the general level of
26 carcinogenic substances in smoke.

27 That's general reduction.

28 What isn't in Dr. Wakeham's memorandum,

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1 his report, perhaps they hadn't thought of it yet, was
2 the fourth of the programs that Dr. Whidby testified
3 about which was the development of a non-conventional
4 cigarette, a cigarette that heated tobacco instead of
5 burning it; and there is no dispute in this case that
6 Philip Morris embarked on such a program and continued
7 it and is still doing it today.

8 What he said, Dr. Wakeham, is that a
9 medically acceptable low carcinogen cigarette may be
10 possible. Its development would require time, money,
11 and unfaltering determination.

12 And we know from the evidence in this case
13 from Dr. Farone and from Dr. Whidby, that general
14 reduction -- that is a reduction in the overall level of
15 tar in cigarettes -- over the last three or four
16 years was undertaken and was successful in the sense
17 that the average tar level of cigarettes made by Philip
18 Morris has been reduced by over 60 percent, and every
19 single cigarette has less tar in it today than it did 40
20 years ago and many cigarettes have very, very low-tar
21 yield and very many cigarettes sold by Philip Morris.

22 Has it proven to be safer is open to
23 debate; but the program of general reduction was
24 advocated by the public health community. It was
25 advocated by Dr. Wynder, one of those people who did
26 those studies back in the 1950s. It was advocated by
27 Dr. Burns who testified here in this case. People
28 believed it would be safer.

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1 Whether it ultimately will prove to be
2 safer, the very low-tar cigarettes, only time will tell.
3

4 Selective reduction has been less
5 successful. Despite Mr. Bowling's promise that we take
6 it out, in practice, reducing particular compounds in
7 smoke while leaving others there has not proven to be an
8 easy thing to do. There have been some successes.
There have been some failures.

9 Denicotinized tobacco. We know, no
10 dispute, Philip Morris developed a cigarette with little
11 or no nicotine in it. It developed and put on the
12 market a Benson & Hedges product with little or no
13 nicotine in it. It didn't sell, but a lot of money was
14 spent on the effort.

15 And what we know, of course, is that the
16 fourth area of product development -- remember the car
17 battery? Cigarettes that heat rather than burning
18 tobacco. We didn't have one of the cigarettes in here
19 when Dr. Whidby was showing it to you, but this is what
20 it looks like.

21 This product, hundreds of millions of
22 dollars, still in test market. I don't know whether
23 anybody knows whether it's going to work or not, but the
24 effort is being made today to improve this product and
25 sell it in the marketplace.

26 And the question is: Could it have done
27 any better? That's really a question you have to
28 decide. Is there any evidence in this case that Philip

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1 Morris could have done it better, that Philip Morris
2 could have made a safe product or a safer product and
3 didn't?

4 And as I said, there's only one witness
5 who came here into this courtroom and told you sort of,
6 sort of, that Philip Morris could have.

7 And I say "sort of" because when it came
8 down to it, Dr. Farone was in no position and had no
9 scientific basis for telling you to a reasonable degree
10 of scientific probability -- and that's the magic
11 language -- that the things about which he testified
12 would, in fact, have been safer, that they would, in

13 fact, have been capable of preventing Mrs. Bullock from
14 getting cancer.

15 Now I want to step back for a moment.
16 Maybe this is a good time for a break, a short break, or
17 whatever you want to do.

18 THE COURT: I am going to go about four minutes,
19 and then we will take a break, and that will be the end
20 of your first hour plus the time that you spent this
21 morning. So you got four minutes.

22 MR. BLEAKLEY: I want to step back for just a
23 moment because I don't think any of you are scientists
24 of the kind that Dr. Whidby and Dr. Farone were. If you
25 are, I apologize to you.

26 But one of the things that Dr. Whidby
27 said, and Dr. Farone agreed, is that science is not
28 exact. It takes a lot of trial and error. You try

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1 things and they don't work. Scientists can disagree
2 with each other about what is the best way to go about
3 doing things; that it is done in fits and starts. You
4 try something for a while, you go down this path, and
5 when that doesn't work, you come back and try another
6 path.

7 Some of the things -- remember Dr. Whidby
8 saying some of the inventions happened by mistake? You
9 are looking for something else, and that's the way
10 science works.

11 And there were a lot of problems
12 encountered by Philip Morris in trying to make safer
13 cigarettes. You heard both of them, both Dr. Farone and
14 Dr. Whidby talk about it here, the kinds of problems
15 that you ran into, the dead-ends that you came to, the
16 fact that technology didn't exist.

17 The Accord is a perfect example. Heating
18 instead of burning tobacco sounded like a great idea,
19 but who was going to buy a cigarette you had to hook up
20 a car battery to? Until somebody was able to come up
21 with a battery that you could put in here, it wasn't
22 practical.

23 That's the kind of problem that scientists
24 have, and those are the kinds of problems that Philip
25 Morris encountered in trying to develop a safer
cigarette.

27 Also -- and Dr. Farone acknowledged
28 this -- making a cigarette a little bit safer, even

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1 assuming you could prove it's a little bit safer, isn't
2 really enough. It isn't enough for two reasons. Making
3 it just a little bit safer doesn't really mean that it's
4 going to prevent anybody from getting sick; and
5 secondly, it isn't just making them safer. They have to
6 be marketable. They have to be capable of being sold to
7 consumers.

8 You could make a cigarette that looked
9 like it was a brick that's shaped like a cigarette rod
10 and it would be safe, but nobody would buy it and nobody
11 would smoke it.

12 So they were always dealing, when they
13 were working on these problems, with the fact that they
14 had to have a cigarette that tasted okay, that smelled
15 okay, that you could light, that you could keep lit, and
16 finally, that you could actually draw smoke through;
17 otherwise, nobody would buy it.

18 And that's a pretty key consideration when
19 you think about the two things that Dr. Farone came here
20 to tell you about: The NOD program and Cambridge,
21 which -- maybe this is a good time.

22 THE COURT: I think it would be.

23 Ladies and gentlemen, you are admonished
24 not to discuss this case amongst yourselves or with
25 anyone else. Do not form or express any opinion on the
26 matter until it's finally submitted to you. You have 15
27 minutes.

28

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1 (A recess was taken in the proceedings.)
2

3 (The following proceedings were held
4 in open court within the presence of
5 the jury:)

6

7 THE COURT: Okay. The record will reflect the
8 jury is present, counsel are present, and you have a
9 little over an hour.

10 MR. BLEAKLEY: Thank you.

11 THE COURT: Do you need any signals?

12 MR. BLEAKLEY: Mrs. Perez is going to signal me
13 at two hours.

14 THE COURT: Pardon me?

15 MR. BLEAKLEY: She is going to signal me when I
16 have a half hour.

17 THE COURT: Okay. That's fair enough.

18 MR. BLEAKLEY: We are getting there. We are
19 almost there.

20 At the break, I was about to start talking
21 about the two and the only two things that Dr. Farone
22 actually came here and told you in any kind of detail:
23 Philip Morris hadn't done what he thought it ought to
24 have done to try to develop a safe cigarette; and I
25 suggest to you that they are quibbling, and that's all
26 it was, was quibbling; but let's take them up one by
27 one.

28 First NOD. Remember NOD? Naturally

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1 occurring denitrification. The idea here was to reduce
2 the nitrates in reconstituted tobacco, one of the two
3 kinds of tobacco that is used in cigarettes; and you
4 remember Dr. Farone told you and Dr. Whidby confirmed
5 that Philip Morris already had in place when Dr. Farone
6 got to Philip Morris, a process called "crystallization"
7 that removed 90 percent of the nitrates from RL or
8 reconstituted tobacco.

9 And NOD, the purpose of it, if it worked,
10 was to reduce the other 10 percent. So however you
11 define it, it was not exactly a big breakthrough; but
12 that didn't mean Philip Morris didn't try for a long,
13 long time to do it.

14 It didn't work. Dr. Farone says there was
15 a stage one of the NOD project that didn't work, the
16 implication being -- in fact, he said more than that.
17 He basically said that if Dr. Whidby came in here and
18 told you it didn't work, he would be lying.

19 Dr. Whidby worked on all aspects of NOD
20 and continued to work on NOD after Dr. Farone was gone
21 from Philip Morris, and he told you that NOD didn't work.

22 Remember we showed you this document,

23 Defendants' Exhibit 5709, which was a memorandum to,
24 among other people, Dr. Farone, and it describes the NOD
25 process.

26 "Sheet produced using NOD
27 processed SFL was found to be
28 unacceptable due to the presence

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1 of undesirable characters in both
2 rod aroma and taste. The
3 characters were described as
4 dirty, barnyard, fecal, and
5 green. Also, changes would take
6 place in a very short period of
7 time."

8 In other words, consistency, they had a
9 problem with it.

10 "At this point the initial
11 objective changed from monitoring
12 sheet production to developing a
13 modification of the NOD process
14 to eliminate the undesirable
15 characters."

16 Which they continued to attempt to do
17 after Dr. Farone left Philip Morris, and it didn't work.

18 But you know what? There wasn't any
19 evidence and Dr. Farone didn't produce any evidence. He
20 didn't offer any evidence. He didn't argue there was
21 any scientific proof that this NOD project, if it had
22 worked and eliminated the other 10 percent of nitrates
23 in RL or reconstituted tobacco, that it would have been
24 demonstrably safer, certainly not that it would have
25 prevented Mrs. Bullock from contracting lung cancer had
she smoked a cigarette with it in it.

26 And that's what I mean by "quibbling."
27 It's a quibble. Was it a good idea? Yes. Was it

3793

1 something worth trying? Yes. They built special
2 plants, special facilities, brought in special
3 equipment, and tried and failed to make this NOD process
4 work.

5 But it didn't stop them from going to
6 other ideas which you heard Dr. Whidby testify about.

7 Now let's turn to Cambridge. Cambridge
8 was a very, very low-tar cigarette. Under the FTC
9 method, less than .5 milligrams. It was sold on the
10 market throughout the United States and here in
11 Los Angeles and in Orange County for six years. It was,
12 Dr. Farone acknowledged, heavily marketed and advertised
13 as the lowest ever.

14 At this point in time, a competitive
15 product, Carlton, was 1 milligram. The whole idea here
16 was to put on the market a product that would be lower.

17 Everyone hoped that this product would be
18 successful. Six years they marketed it, but it didn't.
19 People didn't buy it.

20 They didn't buy it because it didn't taste
21 very good. They didn't buy it because they had trouble
22 lighting it and keeping it lit. Remember Dr. Whidby
23 telling, and Dr. Farone acknowledged it, that they had
24 to give written instructions to people about how to
25 light the cigarette. It didn't work. It wasn't a
26 success.

27 But you know what else? It also wasn't

28 demonstrably safer. Again, a good idea if people would

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1 buy it. The more tar you can remove the better; but
2 there was no proof offered by plaintiff, by Dr. Farone
3 or by anybody else that that ultra low-tar Cambridge
4 cigarette was demonstrably safer.

5 You didn't hear the public health
6 experts -- Dr. Burns, Dr. Benowitz -- come in here and
7 tell you, "Oh, yeah. I remember that Cambridge product.
8 That was really good. NOD, great process. I wish they
9 would have been able to develop that."

10 The fact of the matter is the evidence
11 that you have here is inconsistent with the notion that
12 either of these could ever have been promoted let alone
13 proven to be demonstrably scientifically safer.

14 Worthwhile doing, a good idea, but they didn't work.
15 They simply didn't work.

16 But Philip Morris did not give up trying
17 to develop as low a tar product as it could that people
18 would buy; and it has had on the market for many years,
19 a 1 milligram cigarette, several different 1 milligram
20 cigarettes, in fact.

21 By the way, I wanted to put this up.
22 Dr. Farone himself was having a little bit of difficulty
23 deciding what to tell you about whether Cambridge was in
24 fact safer. At one point, he was asked: "When you were
25 at Philip Morris, in your opinion, when they
26 manufactured that Cambridge cigarette, was that safer
27 than others?"

28 "Yes."

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1 And then later.

2 "Is it your testimony that it has been
3 scientifically demonstrated to a reasonable degree of
4 scientific probability" -- that's the magic language --
5 "that Carlton or Cambridge do not cause cancer in human
6 beings?"

7 "No, there is no evidence to that effect.
8 It has not been demonstrated to a reasonable degree of
9 scientific certainty."

10 "Are you telling the jury that it has been
11 demonstrated scientifically, that is, to a reasonable
12 degree of scientific probability, that the Cambridge
13 with 0.0 tar was safer?"

14 "Can't quite make that determination."

15 A good idea, worth the effort, possibly
16 safer, but there is no proof that the cigarettes that
17 Philip Morris made were defective in design because they
18 didn't keep selling this Cambridge product on the market
19 and they didn't incorporate the fecal-smelling NOD into
20 a product.

21 Now I want to go back on the point I made,
22 which is that Philip Morris put a 1 milligram cigarette
23 out there on the market. Philip Morris had a Benson &
24 Hedges 1 milligram cigarette on the market for over ten
25 years. Did Mrs. Bullock ever buy it? For over ten
26 years it was on the market.

27 Remember that table that Dr. Whidby showed
28 you? Benson & Hedges 70s on the market for ten years

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1 with 1 milligram of tar. Her brand. Did she ever try
2 it? No. Merit Ultima, which has been a commercial
3 success, is a 1 milligram cigarette. They have other

4 1 milligram cigarettes.

5 And by the way, remember the calculation
6 that Mr. Piuze made Dr. Whidby go through that the
7 Cambridge cigarette would have been 99 percent less tar
8 than the 16 milligram Benson & Hedges 100s that she
9 smoked? Do you remember having Dr. Whidby go through
10 that calculation?

11 There it is. 99.4 percent reduction
12 relative to Benson & Hedges 100s.

13 Well, it's true, but Philip Morris has had
14 and has on the market 1 milligram brands that would have
15 reduced the tar by 93.8 percent from the 16 milligram
16 Benson & Hedges 100s that Mrs. Bullock smoked; and
17 that's what I meant when I said he's quibbling. He's
18 quibbling and that's all it is.

19 The suggestion -- we talked about this
20 earlier -- is from Dr. Farone at least, is what Philip
21 Morris should have done is it should have put that
22 Cambridge 0.0 tar cigarette out there and it should have
23 taken all the rest of the cigarettes off the market,
24 whether people liked Cambridge or not.

25 Well, apart from the fact that they
26 wouldn't buy it and apart from the fact that it is not
27 required and that it is lawful for Philip Morris to be
28 selling Benson & Hedges 100s, that's the whole point of

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1 the Federal Trade Commissions tar ratings. The reason
2 why the Federal Trade Commission requires the tar and
3 nicotine yield of cigarettes to be placed in the
4 advertisements is so that people can have a choice.

5 That's the way we do things. We give them
6 choices. There were 1 milligram cigarettes on the
7 market. There were 16 milligram cigarettes on the
8 market. They were lawful. The Federal Trade Commission
9 required you to tell -- the cigarette companies to tell
10 you how much tar yield there was in each cigarette, and
11 you got to make the choice about which one you wanted to
12 smoke.

13 Which one did Mrs. Bullock smoke? All the
14 time from 1966 to date, Benson & Hedges 100s. What
15 reason is there to believe that Mrs. Bullock ever would
16 have smoked the Cambridge cigarette if it had been on
17 the market longer?

18 Talk for just a minute about drift
19 higher. Do you remember drift up, drift higher? Big
20 fraud scheme. Philip Morris is going to bring this
21 cigarette out on the market at virtually no tar; and
22 based on that handwritten note that we don't know where
23 it came from, they were going to allow it to drift up
24 over time; and then on cross-examination Mr. Piuze got
25 Dr. Farone to say they had the same fraud scheme for
26 Benson & Hedges and Parliaments and Virginia Slims.

27 So we went through the procedure, the
28 process, of showing you what, in fact, happened to all

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1 of these cigarettes over a 20-year period.

2 By the way, there wasn't any dispute, even
3 from Dr. Farone, that the ultra low-tar Cambridge
4 cigarette did not in fact drift up in tar content during
5 the six years that it was on the market. This is from
6 the FTC's reports for 1981, first year after it went on
7 the market, 1985, the last year it was on the market.
8 Remember Dr. Farone showed you that?

9 The FTC measurement can't be any more
10 specific than this .5 milligrams in 1981. And five
11 years later, less than .5. The Cambridge product did
12 not drift up or drift higher during the time it was on
13 the market.

14 It is true that when the Cambridge product
15 failed in the marketplace and was taken off the market,
16 later on Philip Morris brought out an entirely different
17 family of Cambridge products. Different color boxes,
18 different promotion, different tar contents; but there
19 can be no suggestion that there was a scheme to defraud
20 the American public because the tar content of all those
21 cigarettes is disclosed in the advertising.

22 What about Benson & Hedges? During the
23 lunch break that day we went back to our office and
24 scrambled around to get the FTC reports so that
25 Dr. Whidby could show you precisely what happened.

26 Initially Dr. Whidby had shown you this
27 exhibit which showed that Benson & Hedges 100s went from
28 22 milligrams of tar to 16 milligrams of tar and the

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1 others, the same thing.

2 But he went back, and we went through the
3 process taking out all of the FTC reports for as many
4 years as we could put together during the lunch break
5 that day. This 1966 figure I have taken off of this
6 exhibit, that is the year Benson & Hedges 100s were
7 introduced. 22 milligrams of tar, 1970, right off the
8 FTC report, down to 20. 1985, down to 16. 1988 it went
9 up a milligram.

10 But remember Dr. Whidby told you these are
11 all plus or minus 1 milligram. The testing can't be any
12 more specific than that; and in the year 2000, in fact,
13 it has gone down to 15 milligrams. Just what he told
14 you. The tar and nicotine yield of all of these
15 cigarettes has never drifted up; has gone down steadily
16 over the years.

17 Now, that brings me to one other subject
18 that has come up during this trial. Mr. Piuze didn't
19 mention it this morning.

20 By the way, I want to remind you again,
21 you didn't hear Mr. Piuze in his closing argument this
22 morning offer -- you didn't hear him offer anything
23 about Cambridge or NOD. Nothing. He didn't talk about
24 design defects, let alone come in here and point you to
25 a piece of scientific evidence that these products, if
26 they had worked, would have been safer and would have
27 prevented Mrs. Bullock from getting lung cancer.

28 The other area that came up during the

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1 trial, also not mentioned by Mr. Piuze this morning,
2 again, a Dr. Farone special, was this issue of doing
3 biological testing of specific brands of cigarettes.

4 And it's worth spending a few minutes on
5 it, even though Mr. Piuze didn't do it this morning; and
6 the reason it's worth spending a few minutes on it is
7 because when you stop and think about it, it becomes
8 apparent that this too is a quibble and nothing more
9 than a quibble.

10 Think about this for a second. Both
11 Dr. Farone and Dr. Whidby testified that Philip Morris
12 did smoke-chemistry testing. I'm not going to spend a
13 lot of time explaining the difference between the two to

14 you. I am not 100 percent sure I understand it myself;
15 but what I do know is that they said smoke-chemistry
16 testing was done through the years on specific
17 commercial brands of cigarettes.

18 And Dr. Farone acknowledged in his
19 testimony that smoke-chemistry testing was important,
20 in fact he said maybe even more important than
21 biological testing. There is no dispute that Philip
22 Morris did safety-biological testing of all kinds of
23 cigarettes -- prototype cigarettes, experimental
24 cigarettes, and research cigarettes. Experimental
25 cigarettes, prototype cigarettes, and research
26 cigarettes that had had all different kinds of tar
27 including tar levels the same as Benson & Hedges 100s
28 including additive packages.

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1 There was no dispute in this case that the
2 testing that was done by Philip Morris of research and
3 experimental and prototype cigarettes was exactly the
4 same kind of testing that was being done by every other
5 tobacco company in the world and all the universities
6 and laboratories and scientists who do testing of
7 cigarettes. They do it on prototypes, experimental
8 cigarettes, and research cigarettes too.

9 And once again, you didn't hear any of the
10 public health experts -- Dr. Burns, Dr. Benowitz,
11 Dr. Cummings, anybody else -- come in here and tell you
12 that Philip Morris is terrible because it didn't do this
13 one kind of testing, biological testing, on specific
14 brands of cigarettes. It's a quibble.

15 Or you didn't hear anybody come in here
16 and tell you that had it done so, that it would have
17 demonstrated that Benson & Hedges 100s or Marlboros were
18 any less or more dangerous than any of the other
19 cigarettes on the market.

20 And that brings me finally to an issue --
21 and the reason I'm raising this is because you are going
22 to see in one of the instructions, the instruction about
23 product design, you are going to see a reference to
24 something called "The Consumer Expectation Test;" And I
25 need to spend just a moment or two talking with you a
26 little bit about this, because when you answer the
27 product design question number one or number three, you
28 are going to have to take into account whether or not

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1 the ordinary consumer expected or would expect
2 cigarettes to be safer than they were.

3 And I would submit to you that the answer
4 to that question is going to be the same as it has been
5 to all of the other questions that you are going to have
6 to think about when you go in there.

7 Remember this, that Mrs. Bullock nor
8 anyone else contracts lung cancer from one cigarette or
9 even from a year's cigarettes. Remember the experts who
10 testified here told you it took 20-pack years of smoking
11 to even develop those mutagenic changes that may become
12 cancer.

13 It's something that happens over time; and
14 when you think about this ordinary consumer, consumer
15 expectation, you have to think about what the ordinary
16 consumer would expect over time and how, after 1966,
17 when there is a warning on the pack that tells you that
18 it's dangerous, could you say that an ordinary consumer

19 would expect it not to be dangerous? Not to mention all
20 of the evidence that you have seen and heard about of
21 the anti-smoking campaign that was going on, the change
22 of the warning in 1970, the change again in 1985, and
23 interestingly, the testimony of Dr. Slovic.

24 Remember Dr. Slovic? Mr. Piuze mentioned
25 him this morning, but he didn't mention that Dr. Slovic,
26 when Mr. Leiter cross-examined him, admitted that
27 consumers actually over-perceive the actual risk of
28 contracting lung cancer. Do you remember that

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1 testimony?

2 Consumers surveyed -- in a survey done by
3 Dr. Slovic, the average consumer thought that the
4 percentage of long-time smokers who get lung cancer is
5 way higher than it actually is.

6 The point being, consumers -- the ordinary
7 consumer does not under-perceive the risk of smoking.
8 The ordinary consumer does not think that cigarettes are
9 safe. The ordinary consumer thinks that cigarettes are
10 dangerous.

11 And most importantly of all, which I
12 haven't mentioned, Mr. Piuze did, the burden of proof is
13 on the plaintiff. It was plaintiff's burden to come in
14 here and prove to you that the ordinary consumer
15 expected cigarettes to be safe; and the plaintiff didn't
16 put on any evidence of any kind about what the ordinary
17 consumer thought. Nothing. Period.

18 So when you are reading that instruction
19 and you are trying to make sense out of it and what it
20 means, I think you'll appreciate and come to the
21 conclusion that it does not apply, and that as a result,
22 there was nothing defective in the design of the
23 cigarettes.

24 I repeat what I know you all know by now:
25 When you are talking about a defective design plan, you
26 are not talking about the cigarettes just being
27 dangerous by themselves. There has to be something
28 about the design of the cigarettes that could have been

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1 better; and no evidence has been put before you in this
2 case that Philip Morris or anybody else could have
3 produced a cigarette that was demonstrably,
4 scientifically proveably safer, let alone that
5 Mrs. Bullock, who stayed loyally to her Benson & Hedges
6 100s for 30-odd years, would have tried even if it had
7 been available.

8 And the proof of the pudding, I submit to
9 you, about what people think about whether cigarettes
10 are safe, once again, the fact that cigarette smoking,
11 the rates of smoking are declining all of the time;
12 that the Surgeon General of the United States in 1989
13 not only said that the ashtray is following the spittoon
14 into oblivion, he describes in great detail the
15 anti-smoking campaign.

16 In fact, the whole point of this Surgeon
17 General's report -- which you'll have in the jury room.
18 I am not going to recommend you read it all, but you
19 might want to take a look at the first couple of pages
20 of this one, Defendants' Exhibit 5654. The whole
21 purpose of this particular Surgeon General's report was
22 to tell the world what had happened during the 25 years
23 since the 1964 Surgeon General's report; what had been

24 the result of the anti-smoking campaign that was
25 underway across the country.

26 And what the Surgeon General of the United
27 States told the world -- I'm not sure I can get that
28 close enough for you to read. There it is. "The

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1 anti-smoking campaign has been a major public health
2 success." Half of all the living smokers who have ever
3 smoked have quit. The rate of smoking among adults in
4 the United States has dropped from 50 percent to less
5 than 25 percent, and in California, 17 percent, and in
6 Orange County, even less.

7 How can you say that the ordinary consumer
8 thought that smoking was safe when what the ordinary
9 consumer was doing was quitting in droves?

10 So I submit to you that the remaining two
11 of the eight questions that you have on your verdict
12 form, questions number 1 and number 3, the answer should
13 be "No."

14 Now, I tried to cover with you in this
15 short time the key evidence that you have been hearing
16 about for the last several weeks, how I hope you will
17 deal with each of the eight questions that you have to
18 answer when you go into the jury room.

19 My guess is that after sitting here for
20 the last several weeks, that those of you who weren't
21 sure or didn't know whether smoking was dangerous before
22 you got here, if there were any of you, are probably
23 more convinced today than you were before you got here
24 that it's dangerous; and those of you who have quit
25 smoking, pat yourselves on the back and say you really
26 made the right decision; and those of you who haven't
27 ever smoked, are not likely to. I don't think there's
28 much doubt about that.

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1 And my guess is that some of you, maybe
2 most of you, maybe all of you, are going to come away
3 from this trial disapproving of some of the things that
4 Philip Morris did and said over the last 40 years, and I
5 am not going to defend it. Mr. Piuze is right. I am
6 not going to defend it.

7 A lot of you, maybe every one of you, are
8 going to think that controls that have been imposed on
9 marketing are a good thing. Some of you may even think
10 there should be more controls. We talked about that
11 fact when we were selecting the jury a few weeks ago,
12 and I am not here to argue against them either.

13 I am here to defend this smoker's claim
14 against Philip Morris and nothing else. I am here to
15 try to convince you that this smoker, out of all the
16 millions of people who smoke, is not entitled to
17 recover.

18 If this case were about whether cigarettes
19 ought to be allowed or whether there ought to be more
20 controls or whether you should or shouldn't be allowed
21 to smoke in public places, we wouldn't need a jury to
22 come in here and decide this case.

23 That's why we went through this process
24 that you all probably wondered about when we were up in
25 that big courtroom upstairs with whatever the number of
26 people was, 160 or so, why we went through that process.

27 We went through that process because we
28 knew, all of us knew, that there were people who think

1 that anybody who smokes for 30 years and gets sick
 2 deserves what they get; and that there are people who
 3 think that cigarette companies and cigarettes are scum
 4 and scumbags who ought not to get away with it; and the
 5 whole point of this process was to get rid of those
 6 people. The whole point of this process was to get a
 7 jury that didn't have those views.

8 There's nothing wrong with those views.
 9 You're entitled to have them. I have some of my own and
 10 I'm sure Mr. Piuze has some of his own; but the point
 11 was getting a jury here who either would not have those
 12 views or who we were all convinced could put them aside
 13 and decide this case, just this one smoker.

14 I said to you back at the beginning that
 15 cigarette smokers, like people, are different. They
 16 smoke for different reasons. They stop for different
 17 reasons. They don't quit for different reasons.

18 And what we brought you here for is to
 19 decide which one of these Mrs. Bullock is. Not Engle in
 20 Florida, not Minnesota, not any of these other cases
 21 that you have heard about. They will be decided on
 22 their facts by juries selected to decide their cases.
 23 You are here to decide this one and just this one.

24 The debate about smoking and cigarettes
 25 and controls and marketing and advertising is going to
 26 go on, no doubt about it; and Mr. Piuze may be
 27 absolutely right, that a century from now people will
 28 look back and say, "What was that? What were they

1 doing?"

2 But the fact of the matter is that today,
 3 in 2002, the State of California, in the United States,
 4 in Los Angeles and Orange County, allow the sale of
 5 cigarettes, allow the sale of Benson & Hedges 100s,
 6 allow the advertising of Benson & Hedges 100s, allow
 7 them to use attractive people in those ads. Those
 8 aren't the issues in this case. Those aren't the issues
 9 we asked you to come here and decide.

10 What we asked you to come here and decide
 11 is whether just one smoker out of all of these millions
 12 of people is entitled to recover; and the evidence in
 13 this case has established that this smoker,
 14 Mrs. Bullock, liked smoking. She knew it was dangerous.
 15 She knew it was risky. She knew for 30 years it was
 16 affecting her health and did it anyway. She didn't want
 17 to quit.

18 She didn't try to quit until the late
 19 1990s. Her attitude, her view was, "Leave me alone.
 20 Get off my case. I know what I'm doing. I am an
 21 adult. This is my business."

22 When she was ready to quit, when she was
 23 ready to quit, she did.

24 Now, I suspect that Mr. Piuze, when
 25 Mr. Piuze gets up here in a few minutes -- maybe I am
 26 wrong; if I am, I apologize -- is going to say, "They
 27 are blaming Mrs. Bullock instead of accepting any
 28 responsibility. They are putting the blame on her," and

1 nothing could be farther from the truth. That's not the
 2 question.

3 The question is what you have on that
 4 verdict form. The question is: Did some wrongful

5 conduct by Philip Morris cause her to smoke and be
6 injured? It's not a matter of blame. Mrs. Bullock made
7 the decision to smoke. She was entitled to. I am not
8 faulting her for making it. I am faulting her for
9 bringing this lawsuit and trying to recover money.

10 She made choices. She made choices
11 knowing what she was doing, and the issue is: Did
12 wrongful conduct cause Mrs. Bullock's injuries? You are
13 going to see that word in every one of those eight
14 questions. Were Mrs. Bullock's injuries caused by --
15 and then it will enumerate the allegedly wrongful
16 conduct. That's what you have to decide in this case
17 and nothing else.

18 Is this particular smoker, out of all of
19 those millions of people who smoked and quit and didn't
20 quit for different reasons over the years, is she
21 entitled to recover? And on the basis of the evidence
22 that you have seen and heard in this case, we submit to
23 you that she isn't.

24 Thank you for your time and for your
25 attention.

26 THE COURT: Thank you, Mr. Bleakley.

27 Mr. Piuze, are you going to need a moment
28 or two to move any of these charts, or are you prepared

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1 to deliver your final 20 minutes now?

2 MR. PIUZE: That sounds like a jury question to
3 me. Is everyone ready to go? Let's do it. Let's roll.

4 But please don't start the clock yet,
5 Judge.

6 THE COURT: I will wait until you say your first
7 word.

8 (Laughter.)

9 MR. PIUZE: In that case, I am not going to talk
10 quite yet.

11 (A pause in the proceedings.)

12 THE COURT: And you can't write out your final
13 argument.

14 (Laughter.)

15 MR. PIUZE: Go.

16
17 * CLOSING ARGUMENT

18 BY MR. PIUZE:

19 You know, I had not enough time to say
20 what I wanted this morning, which is just the way it is;
21 and so some stuff I didn't get to, which is just the way
22 it is; and that's the way it is. I don't have enough
23 time to say everything I want now and that's still the
24 way it is. So I picked the stuff that I want to say the
25 most and that is the way it is.

26 Imagine -- imagine someone saying to
27 themselves, "I want to sell poison to people." That

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1 would be pretty bad. And then imagine someone saying,
2 "I can't do this unless I make this poison attractive."
3 And then imagine someone saying, "Even if it's
4 attractive, when it's found out to be poison, no one
5 will take it anymore."

6 And then the person says, "If I make it
7 attractive and get them to start with it and it's
8 addictive, then even when they figure out it's poison,
9 they will have trouble stopping."

10 And then figure out a real bad person who
11 says, "I'm selling the poison, I'm making it addictive,
12 I'm making it attractive, and then I'm going to say,
13 'Trust me. It really isn't poison. That's a bunch of
14 of baloney.'"

15 And then think about someone saying,
16 "Okay. You believe me. I sold you the poison. I made
17 it attractive. I made it addictive so you couldn't
18 really stop. I told you it wouldn't hurt you. You
19 believed me, but I find fault with you for complaining
20 about it."

21 Because Philip Morris, through its
22 spokesman, only finds fault with Betty Bullock for not
23 going away and dragging herself off some place into the
24 bushes to die quietly.

25 Philip Morris faults Betty Bullock for
26 fighting back. Sure. Philip Morris, that's one of
27 their best customers. She has bought their stuff. This
28 stuff is expensive. Two packs a day, week after week,

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1 month after month, year after year, decade after decade,
2 and given them her hard-earned money; and she worked
3 hard for that money.

4 And they have taken her money year after
5 year, decade after decade, taken her money while telling
6 her not to worry; and now that she can't smoke anymore,
7 "Well, we find fault with you for complaining about it.
8 We can't take your money anymore. Go off and die
9 quietly someplace."

10 Now, I heard the word "justice" being used
11 here and there are a couple of ways to spell that and I
12 spell it the top way. They want just us justice. Sure
13 they do. You just heard this one smoker, in this case
14 about this one smoker, and it's just about this one
15 smoker. Think about it. Think about it. Discuss
16 this. Take bets.

17 Picture the smoker that Mr. Bleakley
18 stands up and discusses in front of a jury and says,
19 "This is the smoker we should give some money to." Even
20 you are laughing at that one, huh? Yeah, this is just
21 one smoker out of millions that he would say every time,
22 every time, every time, every time, and there's no one
23 in this room that thinks different for a quarter of a
24 second.

25 But this is the smoker who is tough enough
26 and angry enough to try to get that, and this should be
27 the time and the place.

28 Now, some of the stuff that was heard in

3813

1 this courtroom is disgraceful and it happened for a
2 reason. It happened to get money from Ms. Bullock and
3 the tens of millions of people like Ms. Bullock, and it
4 didn't happen by accident. Really smart people, really
5 smart businessmen, really smart PR people, really smart
6 advertising people, really, really, really smart people
7 ran this off forever and ever and ever and ever.

8 And so now we are at point where half of
9 all the smokers stopped. Well, I guess the other
10 50 percent are just SOL, huh? Tough luck. Go away.
11 Don't complain. We fault you for bringing a lawsuit.
12 Just go away and die gently in the night.

13 Just a couple of small things, but I have
14 chosen to talk about a couple of small things.

15 The pulmonologist that Jodie brought her
16 mom to, it wasn't the 1970s. No one ever said it was in
17 the 1970s. What Jodie said is she took her mom there
18 and asked the doctor to scare her. She took the doctor
19 aside and said, "Scare my mother. Tell her a story."
20 Well, this is from 1993, and this is a
21 pulmonary function test. This is the same test that
22 Ms. Bullock supposedly got a 95-year-old rating on the
23 very next year. Normal. And Jodie said that "Doctor
24 wouldn't scare my mom. He said it wasn't right because
25 she was okay, and mom said the same thing. Mom said
26 that she's taken these tests many times and they are all
27 okay."

28 And here is a 1998 thing from Blue Cross

3814

1 when she went down there. This is where she did all the
2 push-ups and the sit-ups and everything; heart normal,
3 lungs normal, everything normal, normal, normal, normal,
4 normal, normal; and so she didn't know she was getting
5 bronchitis, and she thought that the bronchitis was
6 irritated and she got the bronchitis and she would take
7 the medicine and it would go away.

8 We have heard about what all these doctors
9 told her. Why didn't Philip Morris bring in these
10 doctors who told her that? Why won't that go out? Can
11 you make that go out?

12 Who said it? Where are the doctors who
13 told Philip Morris that this case had to last a day?
14 All we heard was an attack on Jodie, an attack on Betty,
15 a slight attack on Dr. Vandermolen. They are all wrong.
16 They are all wet. It couldn't have been that way.

17 Didn't hear an attack on Dr. Rodas. He
18 didn't mention anything about lung cancer. To the
19 contrary. He said he doesn't berate his clients. He
20 doesn't berate his patients. He doesn't throw tantrums.
21 He takes it easy.

22 Anyway, this is, if not blame the victim,
23 this is find fault with the victim; and so to quote
24 Dr. Whidby, a real good fisherman who knows how to bait
25 the hook, who knows what to put on that hook so that the
fish gets hooked, he doesn't make fun of the fish
afterwards. He doesn't find fault with the fish for
27 biting.

3815

1 So, yes, Mrs. Bullock was one of 50 or 60
2 million people who bit and Mrs. Bullock was one of 25 or
3 30 million people that haven't been able to quit; and
4 one of the reasons she hasn't been able to let go is
5 because of the way they manipulated information that was
6 let out to her. Sure, she didn't see press releases,
7 but she saw the stories. Sure, who can remember the
8 exact story they ever read? But one of the instructions
9 the judge read to you has to do with circumstantial
10 evidence, and I don't know whether the judge said it or
11 not, some judges do.

12 Circumstantial evidence. The boy's in the
13 kitchen. There's an apple pie or a cherry pie. It's
14 usually a cherry pie, and it's a freshly baked cherry
15 pie; and ten minutes later, there's a big piece missing
16 out of the cherry pie, and Johnny is out in the yard
17 with cherry pie all over his face; and the
18 circumstantial evidence there is that Johnny ate the
19 cherry pie.

20 Well, now, in this case these PR mills and
21 The Tobacco Institute and the TIRC and their researchers
22 said it justifies this. Nothing has been proven. There
23 is no scientific proof. It isn't harmful and
24 Ms. Bullock has her reason for not stopping. "It's
25 just" -- she has trouble with her S's -- "statistics.
26 They kept saying there was no scientific proof. They
27 said it hadn't been proven. No, they said they wouldn't
28 hurt me."

3816

1 So I guess that's some circumstantial
2 evidence that she bit. They are disrespecting her, one
3 of their very best customers. She's used up. She can't
4 buy any more. Go away and die quietly. We find fault
5 with you for bringing a lawsuit. They disrespect all
6 their customers and they disrespect everything that this
7 country is supposed to stand for. Do the right thing.

8 Thank you for listening.

9 THE COURT: All right. Ladies and gentlemen, we
10 are going to take our afternoon recess. You are
11 admonished once again not to discuss this case amongst
12 yourselves or with anyone else. Do not form or express
13 any opinion until you have had the opportunity to
14 discuss this matter with your fellow jurors.

15 We will resume again on Monday at 8:30,
16 and I will give you just a handful of instructions, five
17 or six, and before 9:00 you will be in that room and you
18 will be deliberating.

19 And we will have, before you go in there,
20 an opportunity to announce to you who the alternates are
21 going to be, and I hope you have a pleasant weekend.

22 See you Monday. 8:30.

23
24 (The following proceedings were held
25 in open court outside the presence
26 of the jury:)

27
28 THE COURT: Are we going to have any meetings or

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1 any briefings on the outstanding motions? And if so,
2 because I know you spent the whole day working on this
3 and all day yesterday, are you going to need another day
4 or so?

5 MR. PIUZE: I turned in one of the three briefs.

6 THE COURT: I know you did. I have that.

7 MR. PIUZE: The strict liability thing, I will
8 turn in.

9 THE COURT: When would you like to turn that
10 in?

11 MR. PIUZE: You know, I've got to go out and
12 make a phone call --

13 THE COURT: I understand that. That's why I'm
14 asking you to give yourself whatever you think you need.

15 MR. PIUZE: The other one, I'm basically going
16 to ask the court to refer to the previously filed
17 documents, the previously filed motions in limine,
18 et cetera. I will provide copies if the court wants.

19 THE COURT: I think you need to do that.

20 MR. PIUZE: Okay.

21 THE COURT: And we will all be here at 8:30; but
22 in the event that we are not, is there any reason why I
23 can't have a stipulation that I can read the remaining
24 five instructions, or whatever there are, in the event

25 that somebody is late? Because I am going to start at
26 8:30.

27 And we do need -- you are not ready to
28 make your call yet?

3818

1 MR. BLEAKLEY: I am not.

2 THE COURT: Now I remember what the ground rules
3 are. Okay. We are going to pick the alternates out of
4 the metal box. We will have all the names there, and
5 then we will make a decision as to whether you want them
6 to go into the jury room. We can do that Monday.

7 MR. PIUZE: Thank you.

8 MR. BLEAKLEY: Thank you.

9 MR. LEITER: Thank you, your Honor.

10 MR. PIUZE: How much time do I have left?

11 THE COURT: I don't know, but you had some.

12 MR. BLEAKLEY: And I had some left too. Don't
13 we both get a gold star?

14 THE CLERK: You had 10 minutes and you had 12.

15 THE COURT: I think what should happen is we are
16 going to recess and you have 12 minutes to talk to each
17 other, give additional arguments if you intend to.

18 THE CLERK: Gentlemen, I have taken inventory of
19 the exhibits. I have quite a few that are missing.
20 Some of them are probably enlargements in the jury room.
21 I will check those. But here is my list.

22
23 (The matter was continued to Monday,
24 September 23, 2002 at 8:30 a.m. for further
25 proceedings.)

26 * * *